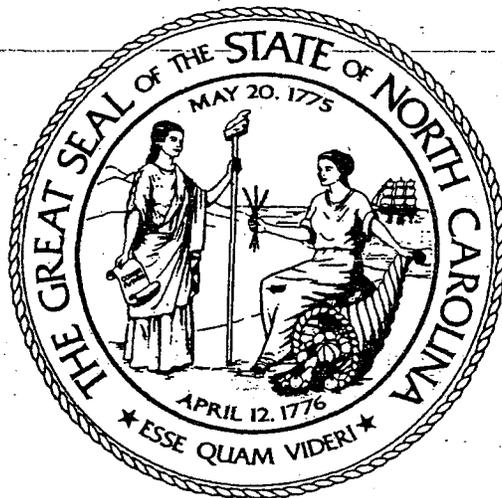


**LEGISLATIVE
RESEARCH COMMISSION**

RAILROADS



**REPORT TO THE
1991 GENERAL ASSEMBLY
OF NORTH CAROLINA
1991 SESSION**

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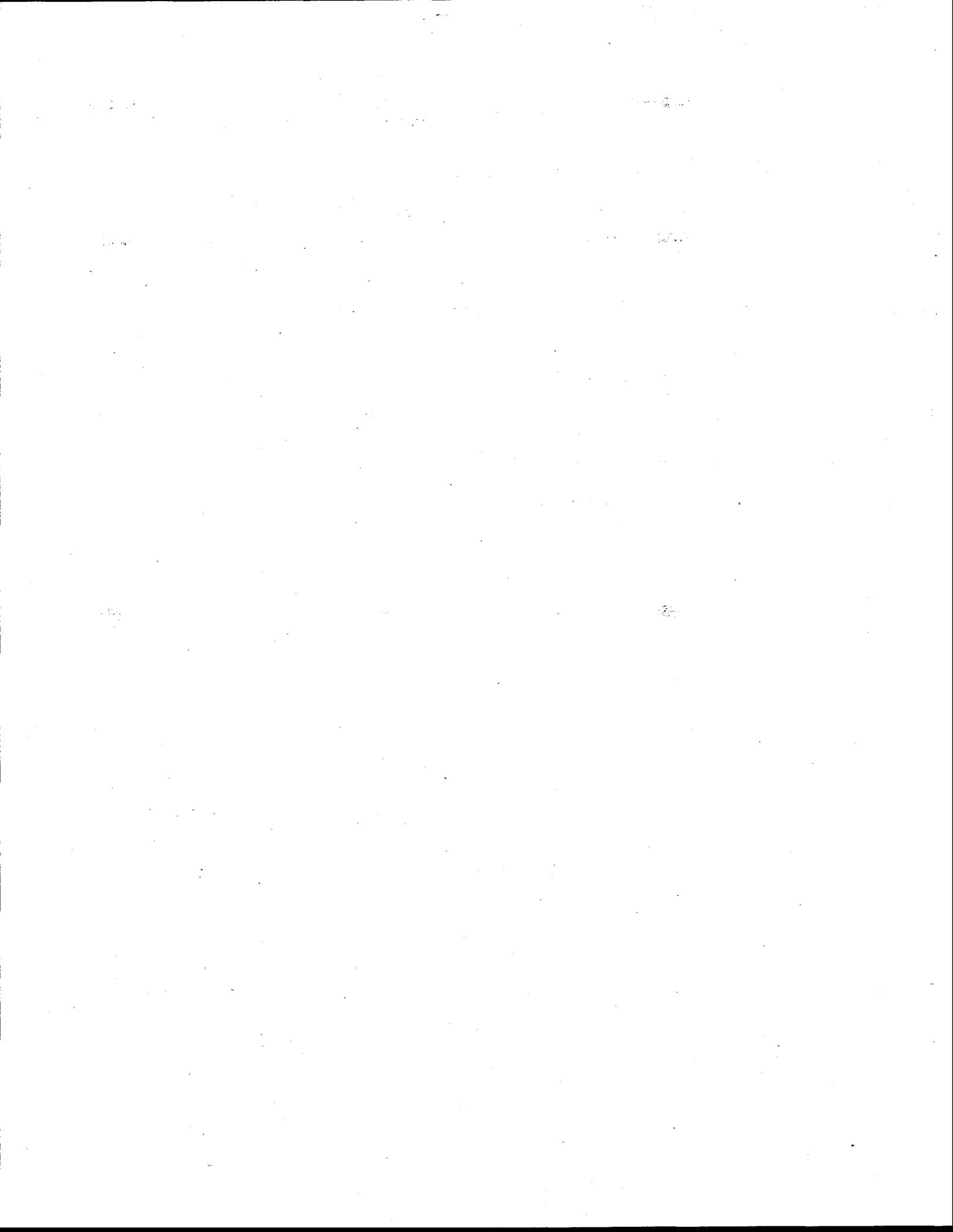
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STATE OF NORTH CAROLINA
LEGISLATIVE RESEARCH COMMISSION
STATE LEGISLATIVE BUILDING
RALEIGH 27611



December 14, 1990

TO THE MEMBERS OF THE 1991 GENERAL ASSEMBLY:

The Legislative Research Commission herewith submits to you for your consideration its final report on Railroads. The report was prepared by the Legislative Research Commission's Committee on Railroads pursuant to Section 2.1(1) of Chapter 802 of the 1989 Session Laws.

Respectfully submitted,

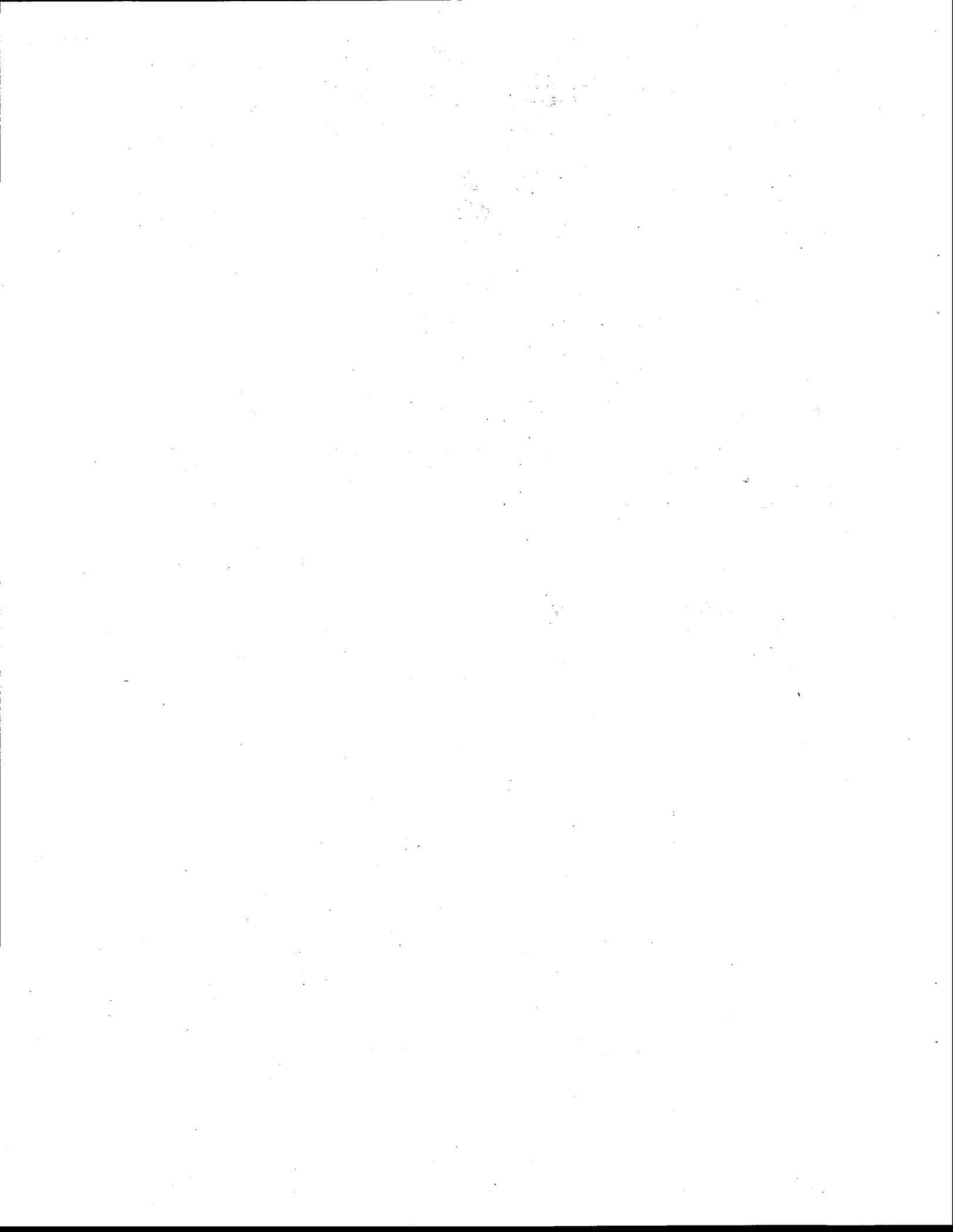
A handwritten signature in cursive script, appearing to read "J. Mavretic".

Josephus L. Mavretic
Speaker

A handwritten signature in cursive script, appearing to read "Henson P. Barnes".

Henson P. Barnes
President Pro Tempore

Cochairmen
Legislative Research Commission



1989-1990

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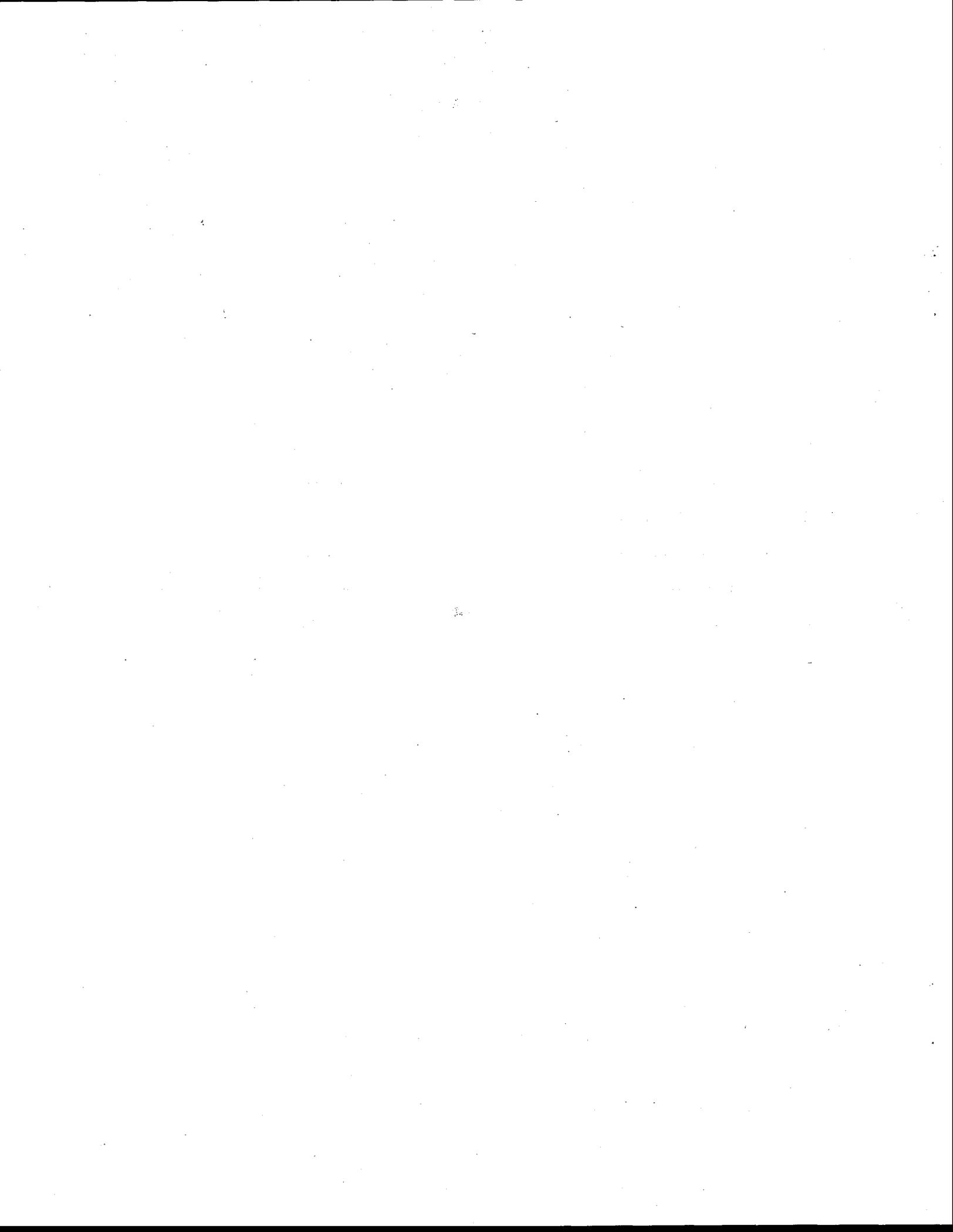
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PREFACE

The Legislative Research Commission, established by Article 6B of Chapter 120 of the General Statutes, is a general purpose study group. The Commission is co-chaired by the Speaker of the House and the President Pro Tempore of the Senate and has five additional members appointed from each house of the General Assembly. Among the Commission's duties is that of making or causing to be made, upon the direction of the General Assembly, "such studies of and investigations into governmental agencies and institutions and matters of public policy as will aid the General Assembly in performing its duties in the most efficient and effective manner" (G.S. 120-30.17(1)).

At the direction of the 1989 General Assembly, the Legislative Research Commission has undertaken studies of numerous subjects. These studies were grouped into broad categories and each member of the Commission was given responsibility for one category of study. The Co-chairs of the Legislative Research Commission, under the authority of G.S. 120-30.10(b) and (c), appointed committees consisting of members of the General Assembly and the public to conduct the studies. Co-chairs, one from each house of the General Assembly, were designated for each committee.

The study of Railroads was authorized by Section 2.1(1) of Chapter 802 of the 1989 Session Laws (1989 Session). The relevant portion of Chapter 802 is included in Appendix A. The Legislative Research Commission grouped this study in its Transportation area under the direction of Representative Joanne W. Bowie. The Committee was chaired by Senator James E. Ezzell, Jr. and Representative J. Vernon Abernethy. The full membership of the Committee is listed in Appendix B of this

report. A committee notebook containing the committee minutes and all information presented to the committee is filed in the Legislative Library.

PROCEEDINGS

The Legislative Research Commission's Committee on Railroads, originally designated as the Committee on the Lease and Renegotiation of Contracts of the North Carolina Railroad Company, met six times. At its initial meeting on February 13, 1990, the Committee agreed that its scope of study should be expanded to encompass the future of railroads in North Carolina, including rail corridor preservation and other related issues. The Legislative Research Commission later approved a motion to expand the study in this manner and to change the name of the committee to the Committee on Railroads. A copy of the motion can be found in Appendix A.

February 13, 1990

Representative Vernon Abernethy, Cochairman, opened the meeting by discussing the problem of the abandonment of essential rail corridors throughout the state, and particularly in the eastern portion of the state. He expressed special concern over an abandoned segment of track from Wallace to Castle Hayne, which once connected the industrialized central portion of the state to the Wilmington port. This abandonment has created circumstances under which it is often not profitable to move goods to the port by rail.

Representative Abernethy observed that the recent changes in Eastern Europe have created great potential for increased trade with that part of the world. However, he expressed concern that the present condition of the rail system in this State will not

allow us to meet those new demands. He also noted that of the four basic modes of transportation in North Carolina (airways, highways, waterways, and railways), only the railways are not subsidized by the State.

Representative Joanne Bowie, the LRC member assigned to the Committee, agreed that the Committee should study ways of improving rail transportation throughout the state. Senator Frank Block added that there is much to be done to promote railroad corridor preservation and the use of railroads in this State, and that the Committee should look at the entire railroad problem and the future of railroad transportation in North Carolina. He mentioned specifically the financing of railroad corridor preservation efforts.

The first speaker was Mr. Stephen Stroud, current President of the North Carolina Railroad Company. He began by providing the Committee with some historical and financial background on the railroad. That material is found in Appendix D.

Mr. Stroud stressed his belief that, in order to be competitive in a global market, North Carolina must look to alternatives to highways as a means of transportation. He feels that the State Ports and the railroads are of equal importance in this respect.

Mr. Stroud expressed his pleasure at the enactment of Chapter 600 of the 1989 Session Laws, which authorized the Department of Transportation to condemn property for railroad corridor preservation. One of the immediate results of this legislation was the acquisition of the corridor running from Dillsboro to Murphy, which has been leased to a short line operator (currently known as the Great Smoky Mountain Railway).

Mr. Stroud presented the Committee with a 1922 map of the rail system in North Carolina, which had been marked in red to indicate the lines that had been lost since that time; eastern North Carolina, he noted, was literally "bleeding red." The Wilmington area has been particularly affected; there is only one remaining line. Among the lines lost was the Wallace to Castle Hayne line, which Representative Abernethy had mentioned earlier.

Mr. Stroud encouraged the Committee to help begin a process of rebuilding the railroads in North Carolina. He hoped that the General Assembly would appropriate additional funds for railroad corridor preservation, and he also advocated a stronger emphasis on railroads within the Department of Transportation. Finally, he asked the Committee to consider legislation that would give the North Carolina Railroad Company the power to condemn property in fee title, so that it might acquire ancillary lines that feed into its present corridor.

At the conclusion of Mr. Stroud's presentation, Senator Frank Block expressed an interest in investigating the need for further legislation to protect railroad corridors against encroachment, in order to preserve the possibility of high-speed rail transportation systems.

Representative Bruce Ethridge expressed his concern that the intermodal port facility in Guilford County was a short distance from the railroad track. He suggested that a connector track from the intermodal port to the main track would encourage industry by eliminating the problem of transporting goods between the two sites.

A discussion ensued regarding the need for a thoroughfare map that would identify major rail corridors that will be needed in the future for both freight and passenger service. The Committee asked Mr. Larry Sams of the Department of Transportation to assemble information on corridors that warrant the most immediate attention, especially those that are currently threatened with abandonment, so that the Committee would know where to direct its efforts.

Mr. Stroud observed that funding for railroads in North Carolina has been essentially non-existent; the Department of Transportation receives about \$100,000 a year for its activities in the area. He stressed that railroads cannot be improved without funding.

In response to a question, Mr. Stroud stated his opinion that a land-based rail system could operate 150-mile-per-hour trains on the existing corridors in North Carolina, and still provide for public safety. He observed that Florida has already established such a system through densely populated areas. Signal technology at rail crossings would have to be improved to correlate to the speed of the trains, and "indiscriminate crossings" would have to be eliminated.

As for the lease negotiations, Mr. Stroud noted that the Board of Directors of the Railroad Company would be conducting those talks with Norfolk Southern, with the Governor and Council of State giving their final approval to the resulting arrangement. However, he did see the General Assembly serving an advisory role in the process. Representative Abernethy suggested that the General Assembly should do whatever it can to ensure that it receives the best possible return on its investment as a stockholder in the company.

The next speaker was Mr. Melville Broughton, Vice President of the North Carolina Railroad Company, representing on the interests of the private shareholders in the company. In addition to the State of North Carolina, which owns 75% of the stock, there are over 1000 private shareholders in the N.C. Railroad Company. Jefferson Pilot is the largest of these. Mr. Broughton noted that, since the merger of the two railroad companies, many steps have been taken by the new Board in recognition of company's responsibility and obligations to the people of North Carolina. The company has established an office and boardroom in downtown Raleigh; the new staff counsel is busy consolidating company records and inventorying company property.

Mr. Broughton stated that the company has some suggestions regarding possible legislation that it would share with the Committee in the future. He stated that the private stockholders have supported the merger and are supportive of efforts to develop the railroad into a viable part of industry and commerce in this State.

The next speaker was Mr. James A. Stem, Jr., Director of the N.C. Legislative Board, United Transportation Union. He told the Committee that he represented the 12,000 career railroad employees in North Carolina. He referred to several issues which he believed would be coming before the General Assembly within the next few years, and which he felt the Committee could provide valuable input on. He observed that there is no better means of transporting hazardous materials than by rail. He echoed Mr. Stroud's comments about the need to take action on railroad crossings in urban areas. Mr. Stem encouraged the Committee to support the continuity and

expansion of service on the North Carolina Railroad line, and to oppose efforts to break it up and lease it to various railroads.

March 14, 1990

At its second meeting, the Committee was addressed by Mr. James J. Scott, Executive Director of the North Carolina State Ports Authority. Mr. Scott told the Committee that the Ports Authority's "largest single problem in its marketing and development at the present time is the lack of intermodal rail service to Wilmington and Morehead City." CSL Intermodal discontinued the intermodal ramp into Wilmington in 1988; for a while, the Ports Authority attempted to pay to keep it open, but this proved prohibitively expensive, and service totally stopped in November 1989. There are currently a large number of containers moving through Wilmington that are brought in by truck; there is no container service at Morehead at the present time, but Mr. Scott was confident that there would be in the future. He asked for the Committee's assistance in securing intermodal rail service to both ports.

In response to a question, Mr. Scott stated that the Ports Authority was reexamining the location of the intermodal port facilities in Greensboro and Charlotte. Particular concern had been expressed at the Committee's first meeting that the Greensboro facility was a short distance from the railroad track; Mr. Scott was not prepared to take a position on whether a spur track or some other arrangement was needed to rectify this. Mr. Stephen Stroud, President of the North Carolina Railroad Company, volunteered that his company was presently inventorying its property holdings, and it will be glad to cooperate in an effort to solve the problem.

Mr. Scott explained that the Rockingham to Wilmington line is currently capable of handling container freight, but the service is simply not being offered. He also emphasized that it is generally recognized that, in order to be competitive in a national market, a port must have at least two railroad lines feeding into it. He thought that North Carolina's ports were the only sizable ports with only one railroad line. Mr. Stroud contributed that one of his company's goals was to arrange for "dual line" service to both ports. He maintained that one way of accomplishing this would be to have more than one railroad operating on a single track, and he assured the Committee that this was something that would be discussed at the upcoming lease renegotiations.

In response to a question, Mr. Scott told the Committee that the Ports Authority does about \$9 million a year of container cargo business. However, the Authority only handles about 30% of the container business generated by North Carolina companies.

The next speaker was Mr. Ed Lewis, President of the Aberdeen & Rockfish Railroad, and President of the newly-reactivated Railway Association of North Carolina. Mr. Lewis was concerned about the recently-passed highway bill, and the effect it would have on the railroad business in North Carolina. From the railroad perspective, the bill will have two results: (1) it will make trucking even more competitive with railroads than it already is, and (2) it will cost railroads more money in the form of highway crossing maintenance. This will add to the railroads' current predicament: as they lose traffic and revenue, they also face increased expenses for crossings.

Crossing repairs can run as high as \$25,000 per crossing, and he noted that his short line has about a hundred crossings on its railroad. He is concerned not only

about the prospect of road widenings and improvements adding to this expense, but also the increased problems with ensuring safety as railroads cross widened roads. Mr. Lewis is also concerned about signal maintenance; federal contributions are fixed, and maintenance costs are rising.

Mr. Lewis further noted that railroads are the only carriers that pay property taxes on the right-of-way they move upon. He feels that this creates another inequity that hurts the railroads' ability to be competitive.

Mr. Lewis estimated that about a quarter of his company's track maintenance budget every year goes to crossing maintenance, signal maintenance, and property taxes on rights-of-way. He stressed that this money would be better spent on keeping the tracks themselves in safe condition.

Mr. Lewis concluded by noting that railroads remain the safest, most environmentally sound and fuel-efficient movers of freight. He proposed several items for a new transportation policy that he would like to see:

- (1) The cost of maintaining highway crossings and signals should come from the highway fund;
- (2) Railroad rights-of-way should be exempted from property taxes;
- (3) Rail rehabilitation projects should be instituted to bring deteriorated lines back to reasonable standards;
- (4) Industrial development programs should provide new industry with rail access on the same basis as they receive highway access;

(5) Highway users should be required to pay an allocated share of highway cost, including the cost of capital required by gross vehicle weight in excess of automobile weight.

The next speaker was Ms. Vonda Frantz, Environmental Coordinator with the Durham City-County Planning Department, whose topic was "rails to trails" rail corridor preservation efforts. She explained that she had been working with the City of Durham on rail corridor preservation projects, particularly in preventing the abandonment of one of the Norfolk Southern lines that runs north of Durham. That project, she noted, has been funded by the State through its new Transportation Improvement Program. She urged the Committee to take a broad view of rail corridor preservation, one that would include the recreational potential of the corridors as well as the future transportation uses.

Ms. Frantz listed four advantages of a rail/trail program for corridors about to be abandoned. Such a program:

- (1) Gives citizens an immediate, low-cost benefit from the State's expenditure toward acquiring a corridor;
- (2) Allows the State, after acquiring a corridor, to transfer the liability, management, and maintenance of the corridor to a local authority;
- (3) Prevents corridor from being "wasted space" until rail use is instituted; and
- (4) Creates a recreational, historical, and environmental resource.

She therefore urged the Committee to view these corridors as a resource which offers many opportunities.

While she was very pleased at the passage of the 1989 legislation authorizing the Department of Transportation acquire corridors for preservation, she felt that there needs to be a coordination between the DOT and the Department of Environment, Health and Natural Resources on rail corridor uses. She stated that several states mandate such cooperation between departments. Florida, Ohio, Wisconsin, Washington, and Virginia have very large and active rail/trail programs.

Ms. Frantz described in some detail the proposed Maryland legislation. The legislation:

(1) Empowers the Department of Natural Resources to pursue and establish rail trails;

(2) Requires the railroad to give the right of first refusal to the State of Maryland;

(3) Allows the State to acquire already abandoned railroads for any transportation-related purpose;

(4) Requires a memorandum of understanding between the Department of Transportation and the Department of Natural Resources as to how they plan to cooperate on use of the corridor;

(5) Provides that the DNR may lease a corridor for recreational use, provided it doesn't interfere with ultimate transportation uses;

(6) Provides that joint rail/trail use is permissible where deemed appropriate;

(7) Provides that rail corridors may not be used for any purpose that would prevent future rail use;

(8) Provides that the State may acquire links in a corridor which have already been encroached upon; and

(9) Authorizes trail use agreements with private land owners of already abandoned corridors.

Ms. Frantz emphasized that rail/trail legislation includes a provision making it clear that the overriding purpose is to preserve the land for future rail use, which should alleviate fears that trail use would impede such use when the time came. She concluded by emphasizing that the real "missing link" was money; she urged that there was a need for a dedicated source of funding.

The Committee requested the position of the N.C. Railroad Company on rails to trails programs. Mr. Stroud responded by stating that his company was not directly opposed to such programs, but he was concerned that they not interfere with future rail use. He also pointed out that there was still some question about the constitutionality of such programs. Ms. Frantz referred the Committee to the recent U.S. Supreme Court ruling in Presault v. ICC, which upheld the constitutionality of amendments to the National Trails System Act allowing unused rights-of-way to be preserved and used on an interim basis as recreational trails.

Next on the agenda was Mr. Larry Sams, Director of the Transportation Planning Division of the Department of Transportation. He presented the Committee with a general hierarchy of railroads corridors in North Carolina, which can be found in Appendix G. This listing demonstrated all the options which are available prior to the actual abandonment of a line. There are a series of types of shortline railroad possibilities which may be worked out before a corridor is abandoned. Mr. Sams emphasized that the best way to save a corridor is to keep a viable railroad operation on it.

One of the real difficulties in the abandonment issue, he contended, is that all transportation conduits other than railroads are public. While few citizens would consider abandoning a secondary road or an airport, a private railroad system is expected to survive on its own merit. If this was how our highway system operated, he suggested, all we would have is interstate highways.

Mr. Sams introduced Mr. Mark Sullivan, Rail Planner with the State Rail Program. Mr. Sullivan presented a status report on the acquisition of the abandoned Wallace to Castle Hayne segment. The 26.8-mile segment was abandoned in 1986; it is a crucial route to connect Wilmington with Raleigh and the northern Piedmont via the North Carolina Railroad. Mr. Sullivan explained that acquisition efforts are presently riding on an interpretation of the original charter by the Attorney General's office. A copy of the status report is contained in Appendix H, p. H9.

Mr. Sullivan next presented maps based upon three sets of priorities for future use:

- (1) Inter-city and inter-state lines (lines connecting metropolitan statistical areas);
- (2) Future commuter rail potential;
- (3) "Particular" economic importance (major railroad mainlines; operating short lines; lines connecting ports with major economic areas; lines serving a major economic activity).

Mr. Sullivan next combined these three sets of priorities on one map to produce a strategic plan for corridor preservation. He used this map to produce a "top 17" list of corridors. This list includes three basic types of corridors:

- (1) Corridors which the State Rail Program has planned to acquire and have been nominated in transportation improvement plans for acquisition;
- (2) Corridors that are rapidly developing as totally unanticipated problems and/or opportunities;
- (3) Corridors that have long been of concern and are now moving toward becoming major problems.

See Appendix H, pp. H6-H8, for a list of these corridors.

Mr. Sullivan stated that he sees rail banking as a last resort, and that the best means of saving these corridors is to keep them as active, operating railroads.

April 25, 1990

At its third meeting, the Committee was first addressed by Mr. Pete Rutski, Assistant Vice-President for Corridor Management with CSL Intermodal. He explained that the CSL intermodal network had been formed from the consolidation of the Sealand and CSX intermodal units when those two companies merged in 1987. The company moves international ocean containers as well as highway trailers in a national rail intermodal network.

In early 1989, the company took action to eliminate what it felt was "unprofitable business;" this included discontinuing service at 14 of 32 terminal locations on the

former CSX network, in an effort to concentrate on long-haul (600 miles or more), high volume (2,000 containers per month) markets. Mr. Rutski explained that, when moving shorter distances and at lower volume, CSL was having difficulty competing with motor carriers offering direct service. Service to Wilmington was among those discontinued, because the company was operating at a substantial loss there.

Mr. Rutski explained that CSL and the State Ports Authority were presently discussing the institution of triweekly container service between Wilmington and Charlotte. He stressed that, in order to bring new business to the North Carolina ports, it is important to understand what inland markets can be served and where the competition for those markets is located. In order to increase the volume at our ports, North Carolina must divert existing business from the other major ports on the east coast.

Mr. Jim Scott, Executive Director of the State Ports Authority, responded to Mr. Rutski's comments. He explained that the intermodal service CSL had quoted the Ports Authority was not competitive with trucking, and that the Authority needs to move further inland than just Charlotte. There was also some disagreement about the crewing arrangements for the Wilmington to Charlotte service. However, Mr. Scott informed the Committee that the Authority had scheduled a meeting with CSL and a major steamship line to discuss that line's specific needs, and he was encouraged that a satisfactory arrangement could be reached. He stressed that intermodal service is absolutely essential to the competitiveness of the North Carolina ports. [Since this meeting, an agreement has been reached to restore limited intermodal service to the ports.]

The Committee was next addressed by Ms. Courtney George, Director of State Tax Litigation and Legislation for CSX Transportation, who discussed the effect of property and franchise tax laws on the competitive posture of the rail industry. As nonresident corporations that cannot easily relocate their property, she explained, they are very vulnerable to inequitable tax laws. She contended that unfair and onerous taxation of railroads in many jurisdictions have contributed to the decline of the rail industry in the face of increased competition from trucking and barges. Unlike railroads, its competitors do not have to acquire, maintain, and pay property taxes on their rights-of-way. In recognition of these inequities, Congress in 1976 enacted Section 306 as part of the Railroad Revitalization and Regulatory Reform Act, which prohibits states from assessing, levying, or collecting a tax which discriminates against a railroad.

Federal court litigation in the 1980s resulted in a finding that North Carolina's property tax laws had a discriminatory effect on railroads, and a tax equalization plan has been worked out with the Department of Revenue. However, Ms. George contended that the franchise tax currently applied to railroads was discriminatory in that the rate applied was five times as high for railroads as that applied to other commercial and industrial taxpayers. **[The franchise tax on railroads was repealed by Chapter 1002 of the 1989 Session Laws, 1990 Regular Session.]**

In addition, Ms. George stressed that competitive pressures on the railroads remain formidable, and she hopes that the General Assembly will seek to promote equality and uniformity in the taxation of railroads and contribute to the preservation and maintenance of our rail transportation system. A discussion ensued regarding the

impact on local governments of a complete repeal of the property tax on railroad rights-of-way.

Mr. Ed Lewis, President of the North Carolina Railway Association, returned to address the Committee for a second time. He presented the Committee with figures indicating that the railroads in North Carolina are currently receiving substantially less than the 50% of the cost of highway signal maintenance that G.S 136-20(h) entitles them to. After polling members of his organization, he found that they are receiving between \$325 to \$490 for crossings that cost between \$1400 to \$2000 to maintain. He also addressed the issue of property taxes, arguing that railroads should be taxed on the same basis as their competitors, the trucking industry. In some instances, the heavy taxation of railroads is enough to "force traffic off the railroad and onto the highways."

Mr. James Stem, Director of the N.C. Legislative Board of the United Transportation Union, announced the rebirth of Operation Lifesaver, a joint effort between the Department of Transportation, law enforcement agencies, railroad companies, and railroad employees to prevent the killing of citizens of North Carolina by trains; the approach is primarily one of education.

Mr. Stem also responded to a paragraph in a recent Department of Transportation bulletin which stated that, if heavier labor protection were applied to short line railroads, at least nine presently operating rail corridors would face probable abandonment. Mr. Stem contended that "there is no such thing as labor protection for short line railroads; the Interstate Commerce Commission does impose some type of protection on Class I railroads selling to short lines, but not on the short line itself."

Dr. Al Capehart, Cochairman of N.C. Rail Trails, next explained that his organization is a citizens' group which hopes to preserve rail corridors and to promote rail trails; their position is that there should be no more rail trail abandonments. Dr. Capehart proposed that the timing of the presumption of abandonment under G.S. 1-44.1 be changed from 7 years to 20 years. This would delay the abandonment process and allow for the transfer of corridors into the public domain so that they can be preserved. He also advocated the establishment of a trust fund that would generate revenue to allow the Department of Environment, Health, and Natural Resources, in addition to the Department of Transportation, to purchase rail corridors through the rail banking process.

Mr. Mark Sullivan, Rail Planner with the State Rail Program, presented the Committee with copies of maps detailing the Department of Transportation's priority ranking of rail corridors according to preservation value. This priority has been established generally by the immediacy of the threat of loss and the importance of reassembling them for future railroad use.

September 11, 1990

At its fourth meeting, the Committee addressed the issue that it was originally assigned to study, the renegotiation of the leases of the North Carolina Railroad Company. The present company exists as a result of the merger of the original North Carolina Railroad Company and the Atlantic and North Carolina Railroad Company, which was completed on September 29, 1989. The State of North Carolina owns 75% of the stock in the company, whose corridor is currently leased to the Norfolk Southern

Corporation. The largest portion of the corridor, running from Goldsboro westward to Charlotte, was leased in 1895 for a term of 99 years at an annual fixed rental. That lease expires on January 1, 1954. The portion running eastward from Goldsboro to Morehead City was leased in 1939 for an annual fixed rental and additional rental calculated on percentages of operating revenue. That lease expires on December 31, 1994. (Further details of the leases are contained in Appendix D, pp. D6-D8).

In 1985, the Legislative Research Commission concluded the work of three successive Committees on the State's Interest in Railroad Properties by recommending the creation of a Railroad Negotiating Commission. The final Committee's report recommended a bill creating such a Commission and charging it with "either negotiating a sale of the State's stock in the two existing railroads or working with the boards of directors of the two railroads to enter into leases prior to the expiration of their leases." The Railroad Negotiating Commission was created by Part XII of Chapter 792 of the 1985 Session Laws, which was later amended by Chapter 1032 of the 1985 Session Laws. Copies of those Session Laws and digests of the Committee reports are found in Appendix E.

Before the Railroad Negotiating Commission could begin its work, the Attorney General's office determined that there were potential anti-trust problems in attempting to link the negotiations of two private railroad companies. The Commission terminated on June 30, 1988, never having carried out its charge.

On September 11, the present Committee began discussing the creation of a new Commission to represent the interests of the State of North Carolina as the majority stockholder in the North Carolina Railroad Company. The Committee began with a

draft similar to the 1985 legislation. The members first discussed the appropriate membership on the Commission, making a few changes in the original makeup of the Commission. It was decided that the proposed Commission should consist of ten members, as follows:

(1) Two members appointed by the Governor, one of whom shall be knowledgeable about the railroad business and one of whom shall be an advocate of passenger rail service;

(2) The Speaker of the House of Representatives or another member of the House of Representatives serving as his designee, and one other member of the House of Representatives appointed by the Speaker of the House of Representatives;

(3) The President Pro Tempore of the Senate or another member of the Senate serving as his designee, and one other member of the Senate appointed by the President Pro Tempore of the Senate;

(4) The Attorney General, or a member of his staff appointed by him;

(5) The State Treasurer, or a member of his staff appointed by him;

(6) Two members or directors of the North Carolina Railroad Company appointed by its board of directors.

After agreeing on the appropriate membership, the Committee discussed the proper charge to the Commission. The original legislation instructed the Commission to either negotiate a sale of stock or work with the Board of Directors of the company to enter into new leases prior to the expiration of the old leases. Several members of the Committee expressed the opinion that the State should not consider the sale of its stock in the railroad. Representatives of the railroad company voiced their concern that

the Committee was even discussing a possible sale. The Committee voted to exclude all such suggestion of sale from the draft legislation.

Questions also arose as to the exact nature of the legal questions raised by the Attorney General's office that had prevented the earlier Commission from carrying out its charge. The Committee adjourned with the understanding that the Committee staff would solicit input from the Attorney General on (1) that office's legal opinion of the 1985 legislation; (2) the legal implications, if any, of a legislative direction to a commission to determine whether the State should sell its stock in the North Carolina Railroad; and (3) that office's legal opinion of the legislation being considered by the present Committee. Staff's inquiry and the Attorney General's response are contained in Appendix F.

October 12, 1990

At its fifth meeting, the Committee approved a proposed bill for the creation of a new Railroad Advisory Commission. The meeting began with a response by Mr. E. Burke Haywood, Assistant Attorney General, to the questions raised at the last meeting. As detailed in the letter reproduced in Appendix F, the Attorney General's office found (1) the anti-trust problems raised in response to the 1985 legislation was mooted by the merger of the two railroad companies; (2) there was no reason why a legislative commission could not consider whether the State should sell its interest in the North Carolina Railroad Company; and (3) it would not be appropriate for a commission to dictate a specific course of action by the Board of Directors, or to participate directly in the lease negotiations.

Mr. Haywood suggested that the Committee should limit the proposed Commission's role to that of an advisory body and a resource for information. He noted that the board of directors of a company is responsible for managing the ordinary business of a corporation, and observed that the State's interest is well-represented by the ten members that the Governor appoints to the fifteen-member Board of Directors of the North Carolina Railroad Company. For further details, see Appendix F.

The Committee next recognized Mr. Scott Saylor, Executive Vice President and Staff Counsel to the North Carolina Railroad Company. Mr. Saylor presented a proposed redraft of the legislation, which the Committee agreed to consider in light of the Attorney General's findings. Among the changes made in the draft were the following:

- (1) The name of the Commission was changed from "Railroad Negotiating Commission" to "Railroad Advisory Commission";
- (2) The Attorney General was replaced as a member of the Commission by the Secretary of Transportation; the Attorney General was retained for staff assistance;
- (3) The charge to the Commission was rewritten to remove references to actual participation by the Commission in the negotiations and to instruct the Commission to "advise the Governor, Council of State, and General Assembly of its opinion of any propose lease or other transaction involving all or a substantial portion of the assets of the North Carolina Railroad Company";
- (4) All instructions to the Commission as to what should and should not be included in a new lease were removed, with the understanding that the Commission would be able to make those decisions on its own.

The final draft as approved by the Committee is found in Appendix C.

Before adjourning, the Committee agreed to recommend that the General Assembly extend this Study Committee for another two years, so that it could continue considering the issues of rail revitalization, rail corridor preservation, and the future of railroads in North Carolina.

November 27, 1990

At its final meeting, the Committee approved the contents of this report.

FINDINGS AND RECOMMENDATIONS

RECOMMENDATION ONE: That the General Assembly enact the bill found in Appendix C, which creates a Railroad Advisory Commission to represent the interests of the State of North Carolina as majority stockholder in the North Carolina Railroad Company. The Commission would study any proposed lease or other transaction involving all or a substantial portion of the assets of the North Carolina Railroad Company and advise the Governor, Council of State, and General Assembly regarding that proposed transaction.

The Committee finds that the State's interests as the owner of 75% of the stock in the North Carolina Railroad Company necessitate the creation of an advisory body to keep the Governor, Council of State, and General Assembly informed regarding any proposed lease or other transaction involving the assets of that company. With the current leases due to expire at the end of 1994, the Committee finds that such an advisory body should be created and its members appointed no later than September 1, 1991.

RECOMMENDATION TWO: That the General Assembly extend this Study Committee for another two years, in order to allow the Committee to continue considering the issues of rail revitalization, rail corridor preservation, and the future of railroads in North Carolina.

The Committee finds that the present condition of the rail transportation system in North Carolina is alarming. Essential rail corridors have either been abandoned or face abandonment in the near future, and railroads are finding it increasingly difficult to compete with the trucking industry for business. The Committee was not able to give sufficient time to these issues and other problems that must be addressed if railroads are to play a significant role in the future of this State.

APPENDIX A



GENERAL ASSEMBLY OF NORTH CAROLINA
1989 SESSION
RATIFIED BILL

CHAPTER 802
SENATE BILL 231

AN ACT TO AUTHORIZE STUDIES BY THE LEGISLATIVE RESEARCH COMMISSION, TO CREATE AND CONTINUE VARIOUS COMMITTEES AND COMMISSIONS, TO MAKE APPROPRIATIONS THEREFOR, AND TO DIRECT VARIOUS STATE AGENCIES TO STUDY SPECIFIED ISSUES.

The General Assembly of North Carolina enacts:

PART I. TITLE

Section 1. This act shall be known as "The Studies Act of 1989."

...

PART II.-----LEGISLATIVE RESEARCH COMMISSION

Sec. 2.1. The Legislative Research Commission may study the topics listed below. Listed with each topic is the 1989 bill or resolution that originally proposed the issue or study and the name of the sponsor. The Commission may consider the original bill or resolution in determining the nature, scope and aspects of the study. The topics are:

- (1) State Ports--study continued (S.J.R. 96 - Barker, H.B. 133 - Hall), Lease and Renegotiation of Contracts of the North Carolina Railroad Company and the Atlantic and North Carolina Railroad Company,

...

Sec. 2.4. Committee Membership. For each Legislative Research Commission Committee created during the 1989-1991 biennium, the Cochairmen of the Commission each shall appoint a minimum of seven members.

Sec. 2.5. Reporting Dates. For each of the topics the Legislative Research Commission decides to study under this act or pursuant to G.S. 120-30.17(1), the Commission may report its findings, together with any recommended legislation, to the 1990 Session of the 1989 General Assembly or the 1991 General Assembly, or both.

Sec. 2.6. Bills and Resolution References. The listing of the original bill or resolution in this Part is for reference purposes only and shall not be deemed to have incorporated by reference any of the substantive provisions contained in the original bill or resolution.

Sec. 2.7. Funding. From the funds available to the General Assembly, the Legislative Services Commission may allocate additional monies to fund the work of the Legislative Research Commission.

...

PART XXV.-----EFFECTIVE DATE

Sec. 25.1. This act shall become effective July 1, 1989.

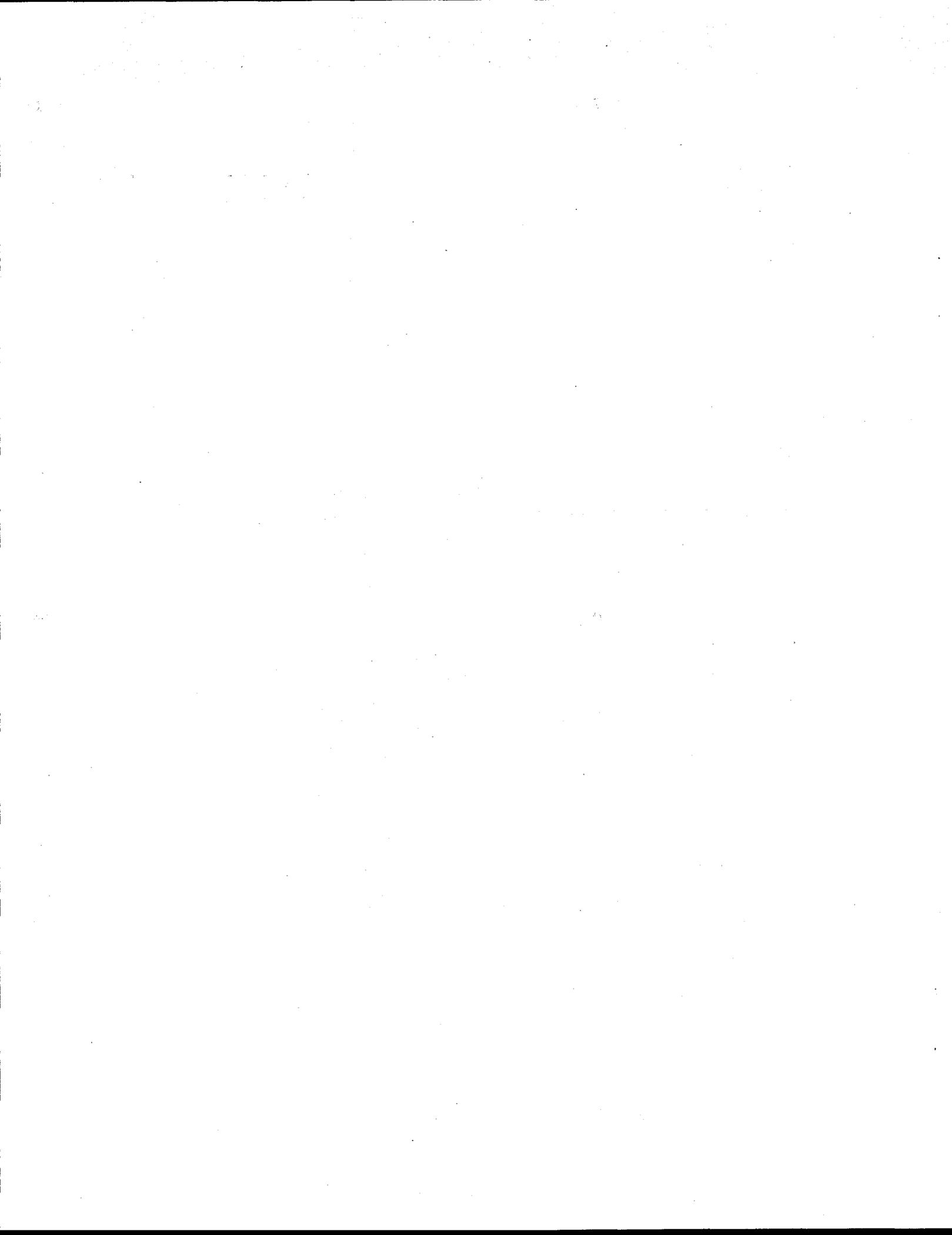
In the General Assembly read three times and ratified this the 12th day of August, 1989.

At its first meeting on February 13, the Legislative Research Commission's Committee on the Lease and Renegotiation of Contracts of the North Carolina Railroad Company discussed its concern over the condition of the rail transportation system throughout North Carolina. The Committee feels that the issues of rail corridor preservation and the future of rail transportation in this State are of vital concern, and need to be addressed by the Committee.

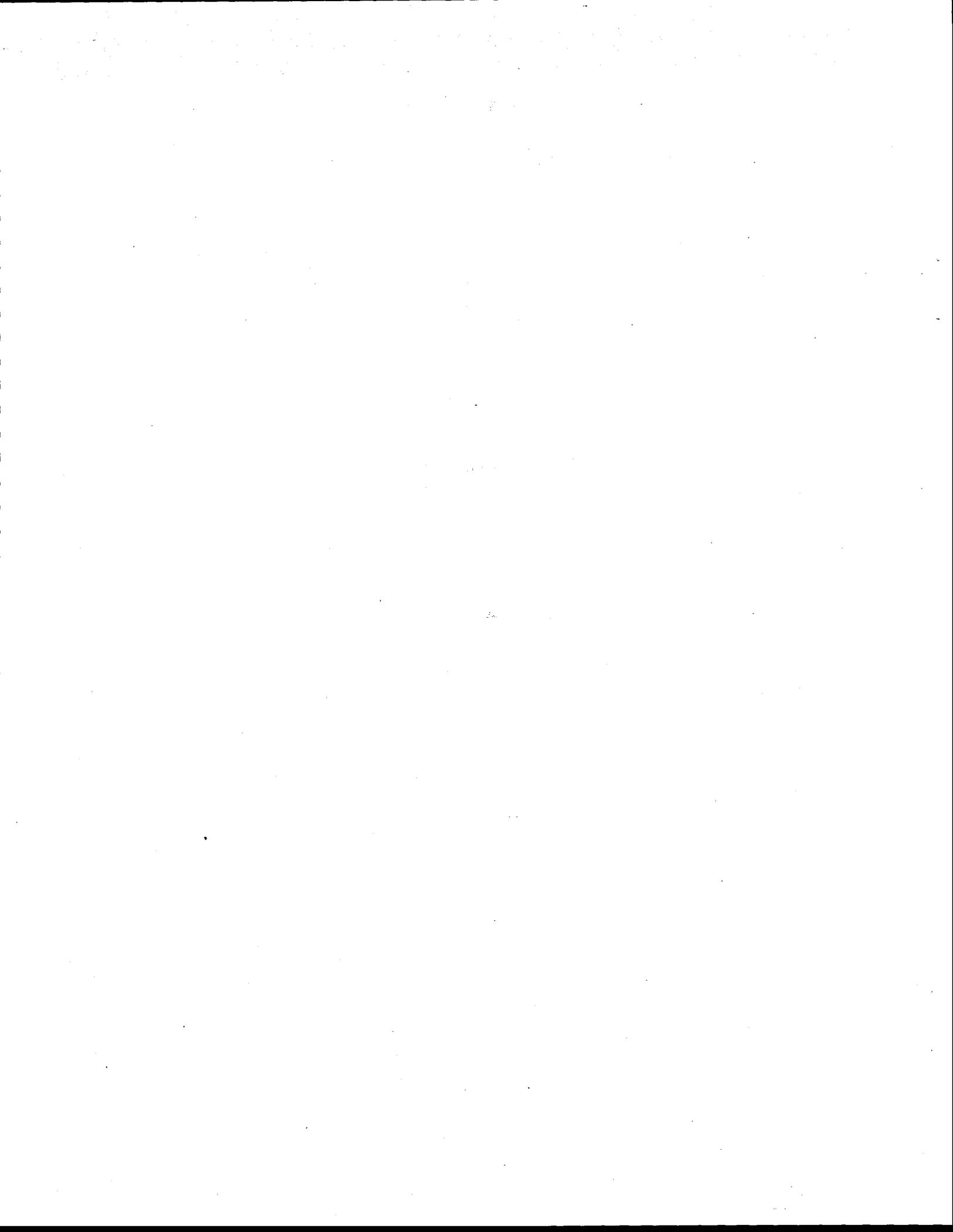
The Committee also notes that the Committee on Long-Range Transportation Needs has decided not to meet at this time, because it feels that other Committees can adequately address the subject assigned to it. Therefore, in order to ensure that the future of rail transportation in North Carolina receives the attention it deserves:

MOTION

Representative Joanne Bowie moves that the Committee on the Lease and Renegotiation of Contracts of the North Carolina Railroad Company be directed to expand its study to encompass the future of rail transportation in North Carolina, including rail corridor preservation and other related issues, and that the Committee be referred to as the Committee on Railroads.



APPENDIX B



MEMBERSHIP OF LRC COMMITTEE ON RAILROADS

LRC Member in Charge:

Rep. Joanne W. 'Joni' Bowie
106 Nut Bush Drive, East
Greensboro, NC 27410
(919)294-2587

President Pro Tem's Appointments Speaker's Appointments

Sen. James E. 'Jim' Ezzell, Jr.
Co-Chairman
P.O. Box 8225
Rocky Mount, NC 27804-1225
(919)443-1505

Rep. J. Vernon Abernethy
Co-Chairman
P.O. Box 38
Gastonia, NC 28053
(704)865-2906

Sen. William H. 'Bill' Barker
P.O. Box 1339
New Bern, NC 28560
(919)638-1901
(Resigned prior to 10/12 meeting)

Rep. David G. Balmer
P.O. Box 12391
Charlotte, NC 28220-2391
(704)334-2849

Sen. Franklin L. 'Frank' Block
520 Princess Street
Wilmington, NC 28401
(919)763-3463

Rep. W. Bruce Ethridge
715 Ann Street
Beaufort, NC 28516
(919)728-2600

Sen. Howard F. Bryan
P.O. Box 1654
Statesville, NC 28677
(704)873-0501

Rep. Pryor A. Gibson
Route 2, Box 382
Wadesboro, NC 28170
(919)572-3761

Mr. Tom Harbin
40 Robinhood Road
Asheville, NC 28804
(704)258-9049

Rep. Daniel T. Lilley
P.O. Box 824
Kinston, NC 28502
(919)523-4309

Sen. Joseph B. 'Joe' Raynor
345 Winslow Street
Fayetteville, NC 28301
(919)483-5948

Rep. Leo Mercer
115 Miller Street
Chadbourn, NC 28431
(919)654-3518

Sen. Dennis J. Winner
81-B Central Avenue
Asheville, NC 28801
(704)258-0094

Rep. Frank J. Sizemore, III
P.O. Box 1988
Greensboro, NC 27420
(919)378-1450

Sen. Robert L. Martin
P.O. Box 387
Bethel, NC 27812
(919) 8325-4361
(Replaced Senator Barker beginning
with 10/12 meeting)

Staff:
Sean Dail
Bill Drafting Division
(919)733-6660

Clerk:
Lillie Pearce
Legislative Building, Room 1220
O: (919)733-5746
H: (919)876-3484

APPENDIX C



GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

S/H

D

91-LL-001

(THIS IS A DRAFT AND NOT READY FOR INTRODUCTION)

Short Title: Railroad Advisory Commission.

(Public)

Sponsors: .

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO CREATE A RAILROAD ADVISORY COMMISSION.
3 The General Assembly of North Carolina enacts:
4 Section 1. The General Assembly makes the following
5 findings of fact:
6 (1) The existence of the North Carolina Railroad
7 Company and the Atlantic and North Carolina
8 Railroad Company spurred the economic development
9 of North Carolina. The two companies have recently
10 merged to form a single company, the North Carolina
11 Railroad Company, which continues to be a valuable
12 resource to the State of North Carolina.
13 (2) Continued freight service on the route is essential
14 to the further economic development of North
15 Carolina.
16 (3) Passenger rail service is currently in operation
17 along the route, with the Carolinian running from
18 Raleigh to Charlotte, the Crescent running from
19 Greensboro to Charlotte, and the Silver Star
20 running from Selma to Raleigh.
21 (4) In 1985, upon the recommendation of the Legislative
22 Research Commission's Committee on Railroad
23 Operations, the General Assembly created a Railroad
24 Negotiating Commission (Part XII of Chapter 792 of

1 the 1985 Session Laws, as amended by Chapter 1032
2 of the 1985 Session Laws). The Commission was
3 charged with either negotiating a sale of the
4 State's stock in the two existing railroads or
5 working with the boards of directors of the two
6 railroads to enter into new leases prior to the
7 expiration of their leases.

8 (5) Before the Railroad Negotiating Commission could
9 begin its work, the Office of the Attorney General
10 determined that there were potential anti-trust
11 problems in attempting to link the negotiations of
12 two private railroad companies. The Commission
13 terminated on June 30, 1988, never having carried
14 out its charge.

15 (6) The General Assembly has determined that a new
16 Railroad Advisory Commission should be created to
17 act as an advisory body to the Governor, Council of
18 State, and General Assembly, by giving them its
19 opinion regarding the interests of the State of
20 North Carolina as majority stockholder in the North
21 Carolina Railroad Company.

22 Sec. 2. There is created the Railroad Advisory
23 Commission, hereafter referred to as the "Commission."

24 Sec. 3. The Commission shall consist of 10 members,
25 appointed as follows:

- 26 (1) Two members appointed by the Governor, one of whom
27 shall be knowledgeable about the railroad business
28 and one of whom shall be an advocate of passenger
29 rail service;
- 30 (2) The Speaker of the House of Representatives or
31 another member of the House of Representatives
32 serving as his designee, and one other member of
33 the House of Representatives appointed by the
34 Speaker of the House of Representatives;
- 35 (3) The President Pro Tempore of the Senate or another
36 member of the Senate serving as his designee, and
37 one other member of the Senate appointed by the
38 President Pro Tempore of the Senate;
- 39 (4) The Secretary of Transportation, or a member of his
40 staff appointed by him;
- 41 (5) The State Treasurer, or a member of his staff
42 appointed by him;

1 (6) Two officers or directors of the North Carolina
2 Railroad Company appointed by its Board of
3 Directors.

4 The Attorney General shall also participate and attend meetings
5 of the Commission in accordance with Section 13 below.

6 Sec. 4. Commission members shall be appointed no later
7 than September 1, 1991, and shall serve at the pleasure of the
8 appointing authority. Any vacancies on the Commission shall be
9 filled by the appointing authority. The President Pro Tempore of
10 the Senate or his designee on the Commission shall call the
11 initial meeting of the Commission.

12 Sec. 5. (a) The President Pro Tempore of the Senate and
13 the Speaker of the House of Representatives shall each appoint a
14 cochairman from the membership of the Commission.

15 (b) The cochairmen of the Commission may appoint an Executive
16 Committee for such purposes as determined by the Commission.

17 Sec. 6. Whenever an appointing authority has designated
18 a person to serve on the Commission in his place as permitted by
19 this act, that person shall be compensated in accordance with G.S.
20 120-3.1 if a member of the General Assembly and in accordance
21 with G.S. 138-5 in any other case.

22 Sec. 7. The Commission shall terminate June 30, 1995.

23 Sec. 8. The Governor, in making appointments to the
24 Board of Directors of the North Carolina Railroad Company under
25 the charter provisions, should seek to ensure continuity in the
26 Board and to maintain cooperation between the Board and the
27 Commission.

28 Sec. 9. The Commission or its Executive Committee may
29 meet in executive session.

30 Sec. 10. The Commission shall advise the Governor,
31 Council of State, and General Assembly of its opinion of any
32 proposed lease or other transaction involving all or a
33 substantial portion of the assets of the North Carolina Railroad
34 Company. If shareholder approval by the Governor and Council of
35 State of a lease or other transaction is required, the Commission
36 shall advise the Governor, Council of State, and General Assembly
37 of its opinion on whether approval should be granted.

38 Sec. 11. If the Commission determines by June 30, 1993,
39 that it is unable to recommend any action, it shall report that
40 fact to the General Assembly so that alternative action may be
41 taken prior to the expiration of the leases on December 31, 1994.

42 Sec. 12. Upon recommending to the General Assembly a
43 lease or other transaction, the Commission shall also recommend
44 the use to be made of increased dividend payments.

- 1 Sec. 13. The Department of Justice shall provide
2 necessary staff assistance to the Commission.
3 Sec. 14. This act becomes effective July 1, 1991.

EXPLANATION OF LEGISLATION

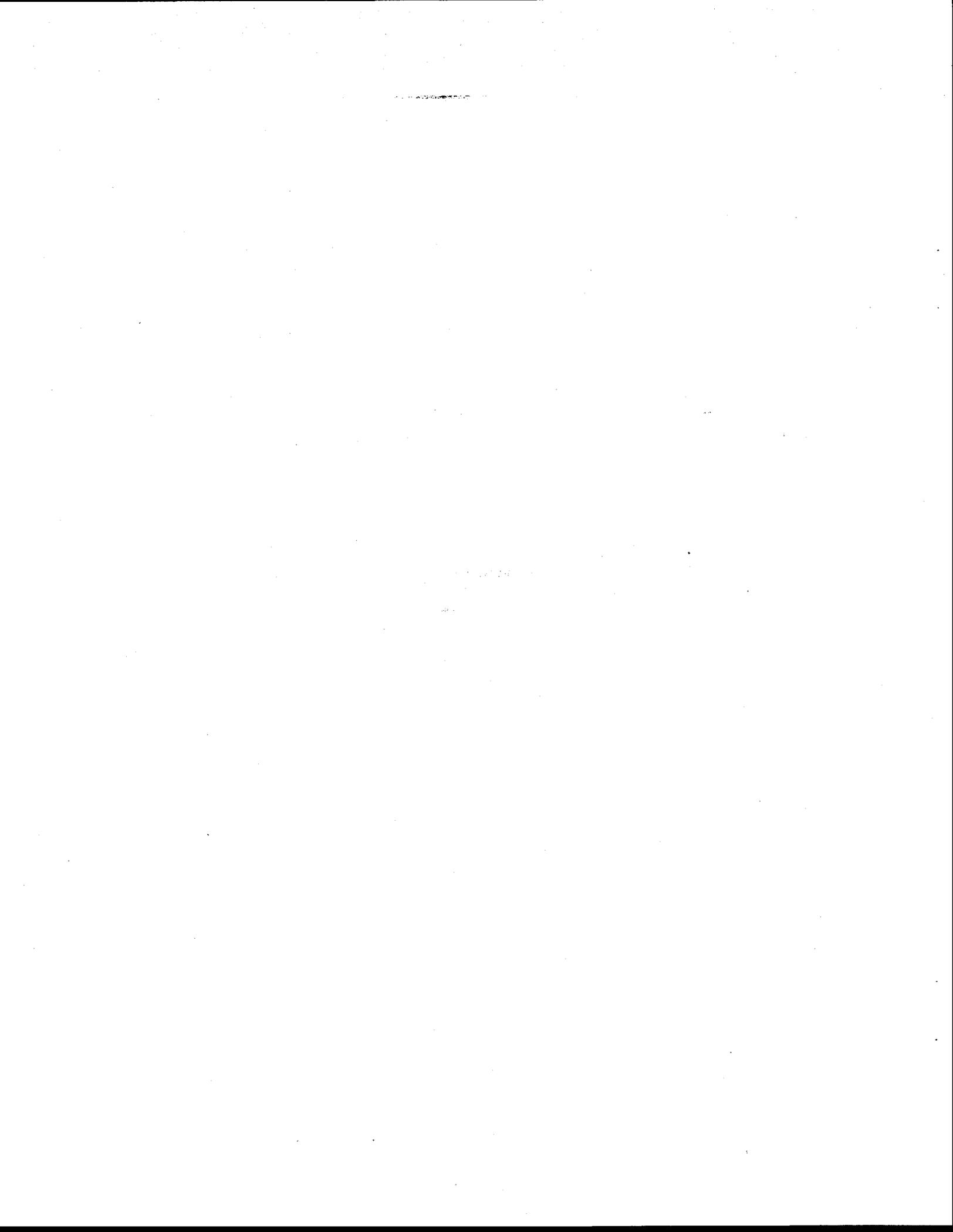
This bill creates a Railroad Advisory Commission to act as an advisory body and a resource for information regarding the renegotiation of the leases of the North Carolina Railroad Company. The Commission is charged with advising the Governor, Council of State, and General Assembly of "its opinion of any proposed lease or other transaction involving all or a substantial portion of the assets of the North Carolina Railroad Company." The Commission is also charged with advising the Governor and Council of State of its opinion on whether they should approve any lease or other disposition requiring shareholder approval.

If the Commission determines that it will be unable to recommend any action with regard to any proposed leases, it is charged with reporting that fact to the General Assembly so that alternative action may be taken prior to the expiration of the current leases at the end of 1994.

The Commission consists of ten members: two members appointed by the Governor, one knowledgeable about the railroad business and the other an advocate of passenger rail service; two members of the House of Representatives appointed by the Speaker; two members of the Senate appointed by the President Pro Tem; the Secretary of Transportation or a member of his staff; the State Treasurer, or a member of his staff; and two officers or directors of the North Carolina Railroad Company appointed by its Board of Directors. The Department of Justice will provide staff assistance to the Commission.

The Speaker of the House and the President Pro Tem of the Senate are each charged with appointing one cochairman to the Commission. All appointing authorities may remove their appointees at any time.

APPENDIX D



North Carolina Railroad Historical Summary

- 1833 Gen. Assembly refuses to enact legislation authorizing railroad
- 1848 Legislature passes the "Ashe Bill" authorizing subscription of \$ 2,000,000 of stock to be state-owned, and \$ 1,000,000 for private holders
- 1851 Groundbreaking ceremony in Salisbury
- 1852 Construction begins
- 1856 Purchase of 632 acres to construct Company Shops (later became Burlington)
- 1861 U. S. Mail contract with NCRR cancelled
- 1866 Rebuilding of line after Civil War
- 1871 Lease of line to Richmond & Danville Railroad
- 1895 Lease of line to Southern Railway for 99 years, expiring December 31, 1994
- 1968 Certain Charlotte properties re-leased to Southern for 99 years
- 1986 Stock split 100 for 1
- 1989 Merger of Atlantic & North Carolina Railroad with North Carolina Railroad Company

Atlantic and North Carolina Railroad Company
Historical Summary

1852 Gen. Assembly authorizes charter

1855 Authorization of purchase of 2/3 of stock by State

1858 Operations begin

1869, 1873 Bill passed authorizing merger with North Carolina Railroad Company

1904 Lease to Norfolk-Southern Railroad Company

1939 Lease to Atlantic and East Carolina Railway Co., expiring December 31, 1994

1957 Southern Railway acquires A & E C

1989 Merger of Atlantic & North Carolina Railroad with North Carolina Railroad Company

Appraisals

(by American Appraisal Associates, 1988,
for purposes of merger)

	<u>Value to Southern</u>	<u>Indep. Enterprise</u>
NCRR	122,000,000	224,000,000
ANCRR	9,490,000	12,800,000
	<hr/>	<hr/>
	\$ 131,490,000	\$ 236,800,000

* excludes non-operating assets

NCRR Corporate and Regulatory Features

- o Pays Federal Income Tax
- o Pays North Carolina Income Tax
- o Pays Railroad Retirement Tax
- o Interstate Commerce Commission Regulated
(Class III Railroad)
- o Securities and Exchange Commission Regulated
(registration and periodic filings under 1933 and 1934 SEC
Acts, and various states' "blue sky" laws)
- o 1,044 stockholders
- o Stock trades Over-the-Counter, recent prices range from \$29
to \$34 per share

Directors and Officers of the North Carolina Railroad Company

President	E. Stephen Stroud, Raleigh
Vice-President	J. Melville Broughton, Jr., Raleigh *
Vice-President	Frank A. Rouse, Emerald Isle
Secretary	P. C. Barwick, Jr., Kinston
Treasurer	Jane S. Doby, Raleigh
Assist. Sec./Treas.	John M. Alexander, Jr., Raleigh *
Staff Counsel/Exec. VP	Scott M. Saylor, Raleigh

Board of Directors

Benjamin K. Ball, Morehead City
Jerome W. Bolick, Conover
J. Melville Broughton, Jr., Raleigh *
Jane S. Doby, Raleigh
Sidney R. French, Cove City *
Marilyn S. Gideon, Greensboro
Paul W. Harrison, New Bern
William H. Kincheloe, Rocky Mount
Chauncey W. Lever, Greensboro *
Coak J. May, Greensboro *
Richard D. Messinger, Salisbury
John K. Patterson, Burlington
C. Reitzel Smith, Asheboro
Van Wyck Webb, Raleigh *
H. Glenn White, Raleigh
(*) elected by the private shareholders

ITEM 1

BUSINESS

General

The North Carolina Railroad Company (the "Registrant") was incorporated in 1849 in the State of North Carolina. It began operations in 1856.

During September of 1989, the Registrant acquired by merger the Atlantic and North Carolina Railroad Company, a North Carolina corporation (the "ANCRR"), pursuant to which the shareholders of the ANCRR exchanged the 17,237 outstanding ANCRR shares of common stock for 283,470 shares of common stock of the Registrant, an exchange ratio of 16.4514 shares of common stock of the Registrant for each outstanding share of ANCRR common stock. The 283,470 shares of common stock of the Registrant issued in the merger constituted approximately 6.62% of the shares of common stock of the Registrant outstanding immediately following the merger.

ANCRR was incorporated in 1852 and owned a railroad line running approximately 94 miles from the Registrant's railroad terminal in Goldsboro, North Carolina to Morehead City, a seaport on North Carolina's Atlantic coast. Prior to the merger, the Registrant owned approximately 223 miles of railroad line running from Charlotte in the western part of North Carolina to Goldsboro in the eastern part of the state. Accordingly, as a result of acquisition of the ANCRR, the Registrant now owns approximately 317 miles of continuous railroad line running from Charlotte, North Carolina to Morehead City, North Carolina.

The Registrant has one office located at 300 South Salisbury Street, Raleigh, North Carolina 27602 and two full-time employees. The Registrant does not actively conduct railroad operations. It leases all its railroad lines to Southern Railway Company and a subsidiary of Southern Railway, the Atlantic and East Carolina Railway, pursuant to three leases described in detail below which are the primary sources of income for the Registrant.

Two of these leases expire at the end of 1994. The expirations of these leases presents both new opportunities and risks for the Registrant. The current leases do not require either the Registrant or the lessees to renew the leases. The current lessees have not indicated whether they desire to renew the leases for all or a portion of the Registrant's railroad lines.

The Registrant intends to pursue its current plan of operation and enter into negotiations with its current lessees for rentals of its properties beyond 1994. However, the Registrant intends to keep open other possibilities for operation of its assets, such as operation of all or part of its rail lines and right-of-way as a short-line railroad or rental of all or part of its rail lines to other operators.

Since the lessees under the leases are obligated to maintain the leased properties at their expense and the Registrant has no present plans for capital improvements, the Registrant anticipates no maintenance or capital expenditures prior to the expiration of the leases. The Registrant intends to seek to negotiate new lease(s) of its properties to commence upon expiration of the existing leases. Although there is no assurance it will be able to negotiate new lease(s) upon acceptable terms, the Registrant anticipates that the lessees under any new lease(s) would assume maintenance obligations with respect to the leased properties.

If the Registrant is unable to negotiate new lease(s) upon acceptable terms and elects to operate the railroad lines itself upon expiration of the existing leases, the Registrant anticipates that it would not likely incur substantial capital expenditures with respect to fixed plant because the lessees are required to return the leased properties, including equipment, in as good a condition and repair as the property was at the inception of the leases, less ordinary depreciation. However, the Registrant may be required to incur substantial capital expenditures to purchase equipment for the operation of the railroad lines, if such equipment were not returned to the Registrant upon expiration of the leases. The Registrant's management cannot now accurately assess the amount of such expenditures.

The Registrant and its lessees are responsible for compliance with any state, federal, local or other provisions relating to discharge of materials or the protection of the environment. State and federal environmental provisions may impose joint and several liability upon the Registrant and its lessees and sublessees for environmental damage or clean up (or the associated costs) of any real properties owned by the Registrant. The Registrant believes that damage or clean up (or the associated costs) would be the responsibility of the lessees or any sublessees or other parties who may have created any actionable environmental condition. However, if such parties are not able to meet their responsibilities, under certain statutes, regulations, and rules, the Registrant could ultimately be held responsible.

1895 Southern Railway Lease

In 1895, the Registrant leased all of its assets to Southern Railway for a term of 99 years ("the 1895 Lease"). In 1982, Southern Railway became a subsidiary of Norfolk-Southern Corporation.

The 1895 Lease provides for semi-annual payments to the Registrant of \$143,000. The lease imposes upon Southern Railway all duties of upkeep and maintenance and requires Southern Railway to pay all income,

property and franchise taxes arising out of the use of the Registrant's property. Upon termination of the 1895 Lease, Southern Railway is required to return the assets (including railbed, depots, homes, buildings, shops, engines, cars, fixtures and other property) in as good condition and repair as the assets were at the beginning of the lease, or to return to the Registrant replacement property for any part of the assets that shall be worn out, destroyed or abandoned. The 1895 Lease expires on January 1, 1995.

A portion of the property leased by the Registrant, the segment between Greensboro, North Carolina and Charlotte, North Carolina, forms part of a major system route for Norfolk Southern.

1968 Charlotte Lease to Southern Railway

Under a lease dated December 31, 1968 (the "1968 Lease"), the Registrant and Southern Railway renegotiated a portion of the 1895 Lease. Three parcels of land located in Charlotte, North Carolina were released from the 1895 Lease and became subject to the 1968 Lease. This lease runs through December 31, 2067, and provides for an annual rental of \$81,319 until 2018, when the rent becomes six percent (6%) annually of the current value of the leased land as determined by the parties. The annual rental under the 1895 Lease of the remainder of the property was not diminished when the 1968 Lease was executed.

1939 Lease to Atlantic and East Carolina Railway Company

Virtually all of the railroad properties acquired from ANCR in the merger are currently subject to a lease dated August 30, 1939 between ANCR as lessor and Atlantic and East Carolina Railway Company ("AECR") as lessee, as amended in 1943, 1951, and 1954, (the "1939 Lease"). The original agreement provided for a twenty-five year term ending in 1954, but was subsequently amended to grant AECR an option, which it exercised in 1953, to extend the term through December 31, 1994. There are no other provisions in the 1939 Lease for extension of the term. Therefore, the 1939 Lease will expire on December 31, 1994, unless otherwise agreed by the parties. In 1957, AECR became a wholly-owned subsidiary of Southern Railway which itself became a majority-owned subsidiary of Norfolk Southern in 1982. Southern Railway, through AECR, currently operates the railroad.

The business of ANCR consisted of leasing railroad properties to AECR under the 1939 Lease, pursuant to which AECR has leased the entire railroad, and other properties necessary to its operation, with certain exceptions. The 1939 Lease provides for an annual fixed rental of \$60,500 to be paid monthly and additional rental for each calendar year during which AECR's railway operating revenues, as shown in its annual reports filed with the ICC, exceed \$475,000. The additional rental, which is to be paid on or before April 1st of the subsequent calendar year for the preceding year, is calculated based on percentages of railway operating revenues according to the following schedule:

- 1.5% of the revenues between \$475,000 and \$500,000;
- 2% of the revenues between \$500,000 and \$550,000;
- 3% of the revenues between \$550,000 and \$600,000; and
- 4% of the revenues in excess of \$600,000.

Under the 1939 Lease, AECR is obligated to pay all operating taxes imposed on it on account of the operation of the railroad, including North Carolina franchise taxes and social security, unemployment insurance and railroad retirement taxes incurred with respect to its employees. ANCR is obligated to pay all ad valorem property taxes, income taxes assessed against it, street assessments, social security taxes with respect to its employees and any franchise taxes incurred other than those levied against it by reason of being an operating railroad company.

The 1939 Lease requires AECR to maintain all of the leased property in as good condition and repair as the property was in at the time the lease was extended in 1954, less ordinary depreciation, and to return the property to ANCR upon termination of the lease in like condition and repair. The lease calls for the establishment of a depreciation and reserve fund for rolling stock, which is administered in accordance with the lease terms by Branch Banking and Trust Company in Kinston, North Carolina, and other banks as agreed upon with AECR in the name of ANCR and AECR as trustees (the "Reserve Fund"). The lease terms require AECR to deposit to the Reserve Fund an amount in cash equal to the depreciation that accrued on rolling stock originally included in the leased properties, and provide that amounts held in the Reserve Fund may be used solely to replace worn-out rolling stock. Notwithstanding the limited purpose stated in the lease, ANCR and AECR agreed to apply approximately \$149,000 of the Reserve Fund to the construction of an agency and yard building in 1988. Withdrawals from the Reserve Fund may be made at the request of AECR upon the signatures of a designated official of AECR and the president of ANCR. Any balance remaining

in the Reserve Fund at the termination of the 1939 Lease becomes the property of ANCR. As of December 31, 1989, the Reserve Fund had a balance of \$408,689. In addition to deposits for depreciation on rolling stock, the Reserve Fund has been credited with revenues derived from the sale of obsolete equipment, land and interest earned on the Reserve Fund's account. The last of the rolling stock originally included in the leased properties was sold in the 1970's, and no deposits to the Reserve Fund had been made on account of depreciation since that time. The interest on the Reserve Fund account constituted a significant percentage of the revenues of ANCR.

Other Leases

In addition to the AECR lease, the Registrant leases two small parcels in Morehead City, North Carolina and New Bern, North Carolina to small businesses, producing approximately \$760 of lease revenues monthly.

ITEM 2

PROPERTIES

The principal asset of the Registrant is 317 miles of railroad corridor property, averaging less than 200 feet in width, between Morehead City, North Carolina, and Charlotte, North Carolina. Some of the property is owned in fee, and the remainder of the road extends over rights of way and perpetual easements purchased or granted in the 19th century. The line extends from Morehead City in an arc across North Carolina westward through New Bern, Kinston, Goldsboro, Selma, Raleigh, Research Triangle Park (unincorporated), Durham, Mebane, Burlington, Greensboro, High Point, Lexington, Salisbury, Kannapolis, and Charlotte. The route between Greensboro and Charlotte is a primary line of Southern Railway's north-south freight route between Washington, D.C. and Jacksonville, Florida.

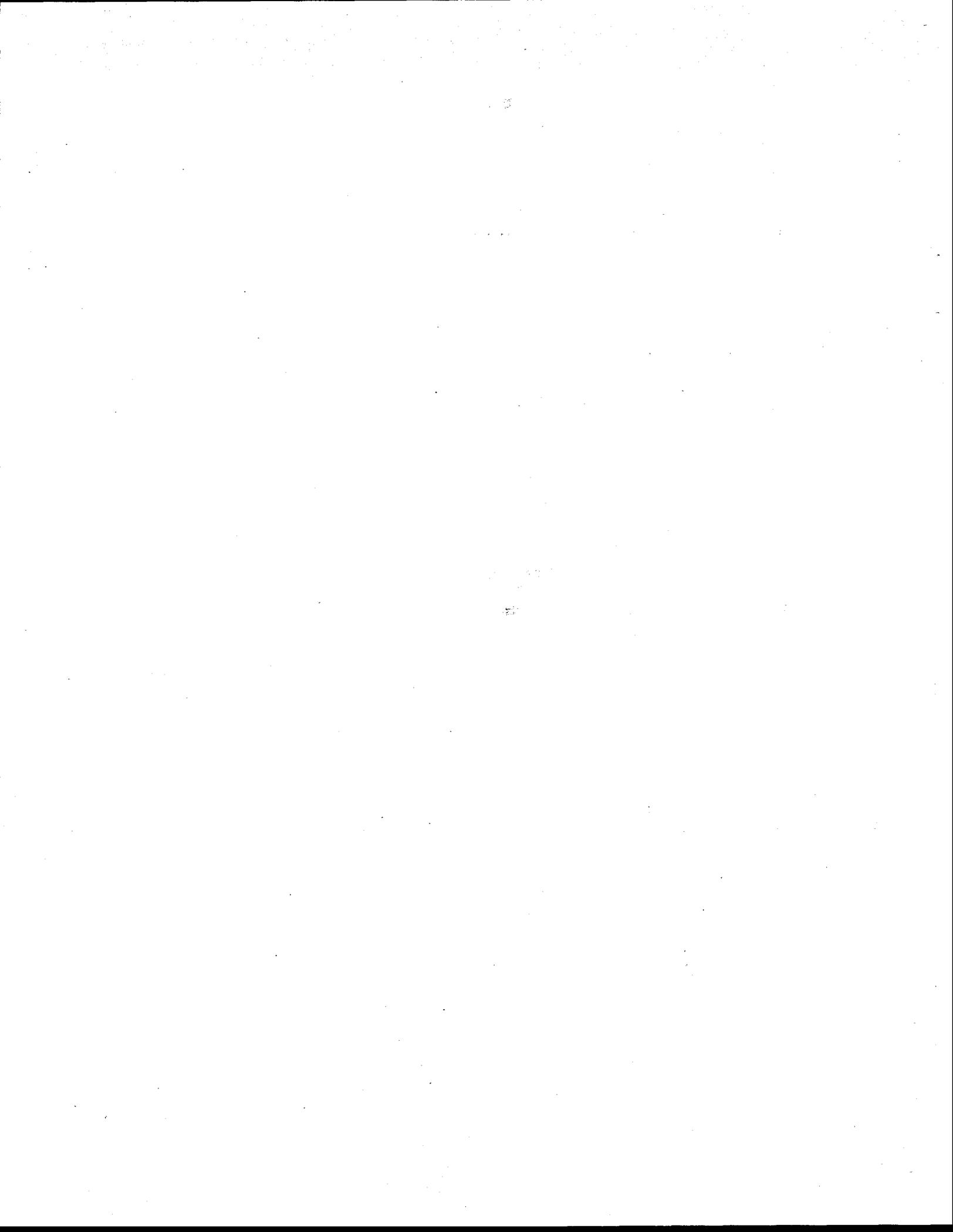
Also along the route from Greensboro to Charlotte lies Southern Railway's Linwood Yard, one of Southern Railway's central freight switching facilities. Linwood Yard is the originating point and terminus for three of Southern Railway's major divisions, encompassing operations from Virginia to Louisiana. Linwood Yard was built during the mid-1970's at a cost of approximately \$48 million. The Registrant's line from Greensboro to Charlotte currently provides the only access to Linwood Yard.

All of the track is standard gauge. The Registrant's tracks on the Greensboro to Charlotte segment have been upgraded since original construction so that today the track is laid with 132-lb. continuous welded rail. Speeds of up to 79 miles per hour may be maintained over the line, and centralized traffic control exists for the entire stretch. On the Greensboro to Goldsboro segment, the line is constructed primarily with 100-lb. bolted rail. No signal system is in use on this segment. Speeds of up to 50 miles per hour may be maintained on this segment. The road segment from Goldsboro to Morehead City is unsignalled, single-trackage with mostly jointed rail of 85- to 132-lb. weight.

The Registrant also owns approximately 262 acres of land divided into 42 parcels (18 parcels acquired from ANCR) that mostly adjoin its rail corridor. Two of the parcels are in Guilford County, two in Alamance County, two in Orange County, four in Wake County, two in Johnston County, three in Mecklenburg County, eight in Wayne County, and one each in Durham, Cabarrus, Rowan and Davidson Counties, four in Lenoir County, six in Craven County, and five in Carteret County. Some of the properties have improvements, the ownership of which depends on the terms of the arrangements with the sublessees of the properties. Two properties from the former ANCR assets, one each in Craven and Carteret Counties, are leased by the Registrant and not included in the 1939 Lease to AECR. Also among these parcels are the three in Mecklenburg County which are located in the downtown Charlotte business district and subject to the 1968 Lease with Southern Railway. Based on searches of land records in the counties through which the Registrant's corridor passes, the Registrant believes it may have claims of up to eleven additional parcels. In a recent review of the Registrant's real estate records, it was determined that NCRR holds a mortgage deed dated 1871 purporting to convey 16 acres of land in Chatham County, North Carolina. The Registrant is continuing to investigate these potential claims but cannot presently assess the validity of such claims or the value of such properties.

During the fourth quarter, management requested that Norfolk-Southern Corporation furnish a detailed inventory of all properties subject to the 1895 and 1939 leases pursuant to the terms of the lease agreements.

APPENDIX E



LRC on the State's Interest in Railroad Properties

Report to the 1981 General Assembly,

1982 Session

COMMITTEE PROCEEDINGS

The Legislative Research Commission's Committee to Study the State's Interests in Railroad Properties met three times. At its organizational meeting, the committee received a report on the history of the two railroads in which it has an interest, and discussed legal issues involved. The committee decided not to take up at this time the railway operated by the Ports Authority Commission.

At the second meeting, the committee received an oral report from Isabel Benham of Printon, Kane Research, Inc. of New York concerning valuation of the railroad properties. The committee also heard from Alice Garland-Swink of the North Carolina Department of Transportation concerning rail and truck traffic.

At the third meeting, the committee adopted proposed legislation to allow the study to proceed, an evaluation to be obtained, and negotiations to be entered into.

RECOMMENDATIONS

Since the North Carolina Railroad Act was passed by the General Assembly on January 27, 1849, the State has had a substantial investment in railroads. After a long period of dormancy, Chapter 716, Session Laws of 1975, directed the North Carolina Department of Transportation to study the North Carolina Railroad and the Atlantic and North Carolina Railroad.

That report was transmitted to the General Assembly on December 22, 1976. Legislation was introduced in the 1979 and 1981 Sessions of the General Assembly regarding a possible change in the State's ownership of the Railroad stock. (A summary history of the State's interest in the two railroads was prepared for this committee and is attached as Appendix "A".)

The committee learned from the Department of Revenue that the two railroads are currently assessed for ad valorem taxation of a sum in excess of \$58 million. Ms. Isabel Benham, President of Printon, Kane Research, Inc., appeared before the committee and testified that from a brief examination of financial records available to her, this figure was reasonable.

The committee is of the feeling that a return of approximately \$300,000 per year on an investment with a market value which might approach \$60 million is inadequate.

Several options exist, including sale of stock for cash, exchange of securities or renegotiation of operating leases, all of which can substantially increase income for the State.

The committee feels that before any serious negotiation can be undertaken, a competent and independent appraisal should be obtained. With this appraisal in hand, negotiations to improve the State's

position can begin. The committee wishes to see that minority stockholders receive the same benefits.

The results of the negotiation would be brought forward to the 1983 Session of the General Assembly for action, and to that end, the committee has one legislative proposal which is explained below and which appears as Appendix "B."

In addition, at Appendix "C" there appears current financial information on the State University Railroad Company, a line from Glenn (east of Hillsborough) to Chapel Hill, which is owned jointly by the Southern Railway and the North Carolina Railroad Company.

Appendix "D" is a letter from Ms. Benham concerning evaluation, while Appendix "E" is a letter from the People's Alliance Fund, Inc., concerning rail passenger service.

Several studies from the Department of Transportation have been presented to the committee, and they will be attached as appendices to the final report.

The proposed bill does several things:

- (1) It authorizes an independent expert evaluation of the State's interests in the two railroad companies.
- (2) It authorizes receipt of proposals to maximize the interests of all shareholders. This could include sale of stock or renegotiation of the leases. In any case, the commission is charged to also treat minority stockholders fairly.
- (3) It authorizes negotiations with a potential purchaser or leasee, but the boards of directors of the two railroads must be consulted prior to naming of negotiators.
- (4) It authorizes a report to the 1983 Session, with

proposed legislation.

(5) It authorizes the evaluation and negotiations to be confidential but all shareholders would be entitled to a copy of the evaluation.

(6) It authorizes executive sessions of the committee.

(7) It authorizes access to property tax records so that all information for an evaluation can be gathered that relates to the operations of the railroads by the two companies or the operations of the railroads.

(8) It expands a 1951 law which requires legislative approval of sale of North Carolina Railroad stock so that Atlantic and North Carolina Railroad stock would also be covered.

(9) It provides that, from July 1, 1982 to June 1, 1983, any action by the Governor and Council of State under G.S. 124-5 concerning the two railroads be reported to the Legislative Research Commission. Further, there would be a flat prohibition on extensions of the leases during that period.

(10) Expenses of up to \$200,000 can be paid out of dividend receipts.

H. B. 1599

CHAPTER 1372

AN ACT CONCERNING A STUDY ON THE STATE'S INTERESTS IN RAILROAD PROPERTIES.

The General Assembly of North Carolina enacts:

Section 1. The Legislative Research Commission, in its study of the State's interests in railroad companies and railroad operations, as authorized in Section 2 of Resolution 61, Session Laws of 1981 is authorized to:

(1) Obtain an independent expert evaluation of the State's interests in the North Carolina Railroad Company and the Atlantic and North Carolina Railroad Company;

(2) Receive proposals to maximize the benefits to all stockholders of investments in these railroad companies and carry on negotiations toward those ends; such negotiations may be carried on by such person or persons designated by the commission (or its subcommittee) after consultation with the boards of directors of the North Carolina Railroad and the Atlantic and North Carolina Railroad; and

(3) Report to the 1983 Session of the General Assembly on such evaluation, including, if any action is recommended, any and all necessary legislation.

Sec. 2. In carrying out Section 1 of this act, the negotiations, in the discretion of the commission (or its subcommittee), may be held in private. Any discussion by the commission (or its subcommittee) of the negotiations shall be a permitted purpose for an executive session under G.S. 143.318.11. Any agreement finally reached shall be made public upon its recommendation by the commission (or its subcommittee).

Sec. 3. Notwithstanding the provisions of G.S. 105.259, the commission (or its subcommittee, or staff, or the person making the evaluation) shall have access to any return or record filed under Article 23 of Chapter 105 of the General Statutes or any return or record used by the Department of Revenue in computing valuation under Article 23, concerning property owned by the North Carolina Railroad Company or the Atlantic and North Carolina Railroad Company; provided, however, that such person obtaining access shall not divulge the contents of such return or record and shall be subject to the penalties of G.S. 105.259 if such record or return is divulged.

Sec. 4. Chapter 1046, Session Laws of 1951, is amended by adding a new section to read:

"Sec. 1.1. No stock owned by the State of North Carolina in the Atlantic and North Carolina Railroad Company shall be sold except with the prior consent of the General Assembly."

Sec. 5. G.S. 124.5 is amended by adding at the end thereof the following new sentence: "Prior to taking any action under this section between July 1, 1982, and June 1, 1983, concerning the Atlantic and North Carolina Railroad or the North Carolina Railroad, the Governor and Council of State shall give at least 20 days' notice to the Legislative Research Commission. No extension of any lease to expire December 31, 1994, may be granted to the lessee or the operating company of the railroad during that 11-month period."

Sec. 6. There is appropriated from the General Fund to the Legislative Research Commission the sum of two hundred fifty-six thousand dollars (\$256,000) for fiscal year 1982-83 for studies authorized by the Commission.

Sec. 7. There is appropriated from the General Fund to the General Assembly the sum of one thousand dollars (\$1,000) for fiscal year 1982-83 to provide funds to the Committee on Employee Hospital and Medical Benefits to reimburse consultant expenses already incurred.

Sec. 8. There is appropriated from the General Fund to the Legislative Services Commission the sum of two hundred thousand dollars (\$200,000) for fiscal year 1982-83 to improve information management and to monitor the implementation of the State employees' health benefits contract.

Sec. 9. Sections 1 through 5 of this act are effective upon ratification; Sections 6 through 8 shall become effective July 1, 1982.

In the General Assembly read three times and ratified, this the 23rd day of June, 1982.

LRC on the State's Interest in Railroad Properties

Report to the 1983 General Assembly

COMMITTEE PROCEEDINGS

The Committee on the State's Interests in Railroad Properties in its report to the 1982 regular session of the General Assembly recommended enactment of a bill to appropriate funds for an independent expert evaluation of the state's interests in the North Carolina Railroad Company and the Atlantic and North Carolina Railroad Company, and to receive proposals for the state's interests and conduct negotiations.

That proposed bill was introduced as House Bill 1599, and, as amended, ratified as Chapter 1372, Session Laws of 1981, Regular Session 1982 (attached as Appendix D). (Section 7 of the bill was added in the House and is unrelated).

The staff requested proposals for an appraisal of the railroad as a going concern, and separate proposals for evaluation of 46 parcels of real property owned by one or the other railroad. A list of the parcels appears as Appendix E. The parcels of real property had been identified by staff after an inspection of property tax records (authorized by House Bill 1599) and records supplied by Southern Railway at its offices in Greensboro, Atlanta, and Washington, D. C. Staff physically inspected each of the parcels.

Proposals for appraisal of the railroad as a going concern were received from Printon, Kane Research Incorporated and from American Appraisal Company. Proposals for appraisal

of the real property were received from Bradshaw, Realtors and from American Appraisal Company.

The committee met on September 9, 1982, and considered the four proposals, hearing representatives of each concern explain their proposal.

The committee recommended to the Legislative Research Commission that Printon, Kane Research be retained for the railroad evaluation and that Bradshaw, Realtors be retained for the real property evaluation.

At its meeting on September 16, 1982, the Legislative Research Commission approved the recommendations and authorized execution of the contracts. A copy of the Printon, Kane contract appears as Appendix F

The Printon, Kane Report was received on December 1, 1982, and a copy of the summary of the valuation appears as Appendix G. The full report, an additional 80 pages, is available in limited quantity in the Legislative Library.

The committee met again on December 17, 1982, and heard a presentation from Isabel Benham, President of Printon, Kane Research explaining the evaluation report, and then adopted the legislative recommendation contained in this report.

LEGISLATIVE RECOMMENDATIONS

The Legislative Research Commission on September 16, 1982, authorized entering into a contract with Printon, Kane Research to conduct an evaluation of the state's interests in railroad properties. That report was submitted on December 1, 1982, and indicated an approximate valuation of \$53,700,000 for the state's interests. (See Appendix G .)

Since the railroads hold a fee simple interest to 47 parcels of real property, the Legislative Research Commission at the same September 16, 1982 meeting authorized entering into a contract with Bradshaw, Realtors for evaluation of those parcels. The contract calls for completion of the evaluation by February 15, 1983.

House Bill 1599 allows for the Legislative Research Commission to "Report to the 1983 Session of the General Assembly on such evaluation, including, if any report is recommended, any and all necessary legislation."

Until the final appraisals are received on February 15, 1983, the committee feels unable to make any definite recommendations on whether the rail properties should be sold, the leases extended, or whether other action should be taken.

G. S. 120-30.11 provides that the terms of office of members of the Research Commission "... shall end on the date when the next biennial session of the General Assembly convenes..." (January 12, 1983).

Prior to 1982, the statute provided for a holdover of the old members during the session, but it is felt that the current statute indicates there is no holdover.

Because of the complex nature of this subject, the committee recommends that the term of the Legislative Research Commission be extended but that meetings during the 1983 session be only for the purpose of further action under House Bill 1599. A copy of the recommended legislation appears as Appendix H.

This will allow the Legislative Research Commission in late February or early March to decide the next step in this process.

LRC on the State's Interest in Railroad Properties

Report to the 1985 General Assembly

COMMITTEE PROCEEDINGS

The Committee on the State's Interest in Railroad Properties in its report to the 1982 regular session of the General Assembly recommended enactment of a bill to appropriate funds for an independent expert evaluation of the state's interests in the North Carolina Railroad Company and the Atlantic and North Carolina Railroad Company, and to receive proposals for the state's interests and conduct negotiations.

That proposed bill was ratified as Chapter 1372, Session Laws of 1981, Regular Session 1982.

The Committee recommended to the Legislative Research Commission that Printon, Kane Research be retained for the railroad evaluation and that Bradshaw, Realtors be retained for the real property evaluation.

A summary of the Printon, Kane Report appears in the 1983 report of this Committee. The full report, an additional 80 pages, is available in limited quantity in the Legislative Library. Copies of the 1981 and 1982 Committee reports are also available in limited quantity in the Legislative Library.

The Committee met on May 10, 1984 and heard a presentation from the North Carolina Department of Transportation concerning passenger rail service, and from the Citizens Railway Council. Under the 1981 legislation the Committee appointed a negotiating committee to meet in executive session. That subcommittee met once.

After due consideration of the points of view, the Committee

on December 6, 1984 adopted the recommendations in the next section of this report. Legislation to implement those recommendations is attached as Appendix D.

LEGISLATIVE RECOMMENDATIONS

The Committee on the State's Interests in Railroad Properties, after careful study, makes the following determinations and recommendations:

(1) The existence of the North Carolina Railroad Company and the Atlantic and North Carolina Railroad Company spurred the economic development of North Carolina, and they are a valuable resource to the State as a whole, and especially to Piedmont and Eastern North Carolina.

(2) Continued freight service on both routes is necessary to the further economic development of North Carolina.

(3) Passenger rail service is currently in operation along the route, with part of the Crescent serving Charlotte-Greensboro and party of the Carolinian serving Charlotte-Raleigh. These services are beneficial to North Carolina, although the Committee has no position on whether these specific routes should be continued.

(4) The signing in 1895 by the North Carolina Railroad of a fixed-rate 99 year lease in hindsight was a financial mistake. Based on the Printon Kane and Bradshaw appraisals, the value of the State's interests in the North Carolina Railroad is \$54.2 million. Based on the normal dividend of \$8.00 per share, the State's annual rate of return from a dividend of \$240,016 is just .44%.

(5) On the other hand, the Atlantic and North Carolina Railroad Company lease, for a term of 55 years, had an override based on a percentage of revenues. Based on the Printon, Kane, and Bradshaw appraisals, the value of the State's interests in the Atlantic and North Carolina railroad is 2.0 million. Based on the average dividend for 1978-82 of \$5.40 per share, the State received an average annual dividend during that period of \$68,396, for an annual rate of return on investments of 3.42%.

(6) The Committee feels that the State should either negotiate a sale of stock, or should work with the Boards of Directors of the two railroads to enter into new leases prior to the expiration of the old leases.

(7) Any new lease should not be for a period of more than 30 years beyond the expiration of the current lease, and should have an escalator clause based either on revenues or inflation, or some combination of clauses.

(8) Any new lease should preferably involve both railroads. This will not only improve the bargaining position of the two railroads, but ensure continued operation of freight service to Eastern North Carolina as well as to the Piedmont. The Commission may also consider other alternatives.

(9) Any new lease should require that the lessee cooperate with innovative uses of the right-of-way, whether for fiber-optics, intra-city light rail (trolley) service, and passenger service (in addition to the requirements of the National Railroad Passenger Act).

(10) The North Carolina Railroad and the Southern Railroad Company should jointly reorganize the State University Railroad Company under Southern Railroad, but in a manner to ensure continued freight service to the University of North Carolina at Chapel Hill.

(11) The Governor, in making appointments to the Board of Directors of the North Carolina Railroad and the Atlantic and North Carolina Railroad under the charter provisions should seek to ensure continuity of the boards as well as directing the two boards to meet jointly and cooperate with the Commission established as a result of this report.

(12) The Committee recognizes that with two railroads and the State involved on one side and one or more potential purchasers or lessees on the other, there must be one voice less the negotiations be chaotic. While the State recognizes that the two railroads are private corporations, the State as majority stockholder has the paramount interest.

(13) The General Assembly should appoint a negotiating commission to both assist the railroads in negotiating as well as decide the most beneficial route to take. Such commission should consist of 12 members, appointed as follows:

- a. 2 directors or officers of the North Carolina Railroad appointed by its board,
- b. 2 directors or officers of the Atlantic and North Carolina Railroad, appointed by its board,
- c. The Attorney General or a member of his staff designated by him,

- d. The State Treasurer or a member of his staff designated by him,
- e. The Lieutenant Governor or his designee and one member of the Senate appointed by him,
- f. Two persons appointed by the Governor, one of whom shall have business experience and one of whom shall be knowledgeable and an advocate of passenger rail service, and
- g. The Speaker or his designee and one member of the House appointed by him.

(14) This Commission should have a term expiring June 30, 1988. It should negotiate with Southern Railroad (Norfolk Southern Corporation) and any other potential person it desires to negotiate with. The Commission should be allowed to meet in executive session.

(15) If the Commission determines that a renegotiation of the lease is desirable, it should recommend the terms of such lease for joint approval of the Boards of Directors of the two railroads.

(16) If the Commission determines that sale of the stock owned by the State is desirable, it shall recommend a contract to the General Assembly for its approval as required by Chapter 1046, Session Laws of 1951 as amended by Chapter 1372, Session Laws of 1981.

(17) If the Commission determines by June 30, 1988 that it is unable to recommend any action on terms that are favorable to the State and the Railroads, it shall so report to the General

Assembly so that alternate action to take effect at the expiration of the lease in 1994 can be taken.

(18) To protect the interests of the minority stockholders any recommendation to sell the stock must include a provision that the purchaser will offer to purchase all shares tendered at the same price or for the same amount of stock to be swapped.

(19) If the stock is sold, the Committee recommends that the proceeds be placed in a special capital improvements fund with the principal and interest being used for purposes provided by the General Assembly.

(20) The Commission should have expert assistance in negotiations, to be provided by the Attorney General, State Treasurer, and the two Railroads, or under contract with a qualified professional.

deducted as in G. S. 105-213(a) for the costs of administering the intangibles tax. Committee expenses shall be limited to a maximum of seventy-five thousand dollars (\$75,000).

PART XII.—RAILROAD NEGOTIATING COMMISSION.

Sec. 13.1. There is created the Railroad Negotiating Commission, hereafter in this Part referred to as "Commission".

Sec. 13.2. The Commission shall consist of 12 members, appointed as follows:

(1) Two members appointed by the Governor, one of whom shall be knowledgeable about business and one of whom shall be an advocate of passenger rail service.

(2) The Speaker of the House of Representatives or his designee, and one member of the House of Representatives appointed by the Speaker of the House of Representatives.

(3) The Lieutenant Governor or his designee, and one member of the Senate appointed by the Lieutenant Governor.

(4) The Attorney General or a member of his staff appointed by him, ex officio.

(5) The State Treasurer or a member of his staff appointed by him, ex officio.

(6) Two officers or directors of the North Carolina Railroad Company appointed by its board of directors.

(7) Two officers or directors of the Atlantic and North Carolina Railroad Company appointed by its board of directors.

Sec. 13.3. Commission members shall be appointed no later than September 1, 1985, and shall serve at the pleasure of the appointing authority. Any vacancies on the Commission shall be filled by the appointing authority. The Lieutenant Governor shall call the initial meeting of the Commission.

Sec. 13.4. (a) The President of the Senate and Speaker of the House of Representatives shall appoint a cochairman each from the membership of the Commission.

(b) The Commission may appoint an executive committee for such purposes as determined by the Commission.

Sec. 13.5. Whenever an appointing authority has designated a person to serve in his place as permitted by this Part, that person shall be compensated in accordance with G.S. 120-3.1 if a member of the General Assembly and in accordance with G.S. 138-5 in any other case.

Sec. 13.6. The Commission shall terminate June 30, 1988.

Sec. 13.7. The General Assembly makes the following findings of fact:

(1) The existence of the North Carolina Railroad Company and the Atlantic and North Carolina Railroad Company spurred the economic development of North Carolina, and they are a valuable resource to the State as a whole, and especially to Piedmont and Eastern North Carolina.

(2) Continued freight service on both routes is necessary to the further economic development of North Carolina.

(3) Passenger rail service is currently in operation along the route, with part of the Crescent serving Charlotte-Greensboro and part of the Carolinian serving Charlotte-Raleigh.

(4) With two railroads and the State involved on one side and one or more potential purchasers or lessees on the other, there must be one voice lest the negotiations be chaotic. While the State recognizes that the two railroads are private corporations, the State as majority stockholder has the paramount interest.

Sec. 13.8. The Commission should either negotiate a sale of stock or should work with the Boards of Directors of the two railroads to enter into new leases prior to the expiration of the old leases.

Sec. 13.9. Any new lease should not be for a period of more than 30 years beyond the expiration of the current lease, and should have an escalator clause based either on revenues or inflation, or some combination of clauses.

Sec. 13.10. Any new lease or sale of stock should preferably involve both railroads. This will not only improve the bargaining position of the State and the two railroads but help ensure continued operation of freight service to Eastern North Carolina as well as to the Piedmont. The Commission may also consider other alternatives.

Sec. 13.11. Any new lease should require that the lessee cooperate with innovative uses of the right-of-way, whether for fiber-optics, intra-city light rail (trolley) service, and passenger service (in addition to the requirements of the National Railroad Passenger Act).

Sec. 13.12. The Governor, in making appointments to the Board of Directors of the North Carolina Railroad and the Atlantic and North Carolina Railroad under the charter provisions, should seek to ensure continuity of the boards as well as directing the two boards to meet jointly and cooperate with the Commission established by this Part.

Sec. 13.13. The Commission should negotiate with Southern Railroad (Norfolk Southern Corporation) and any other potential person with which it desires to negotiate. The Commission and its Executive Committee may meet in executive session.

Sec. 13.14. If the Commission determines that a renegotiation of the lease is desirable, it should recommend the terms of such lease for joint approval of the Boards of Directors of the two railroads.

Sec. 13.15. If the Commission determines that sale of the stock owned by the State is desirable, it shall recommend a contract to the General Assembly for its approval as required by Chapter 1046, Session Laws of 1951, as amended by Chapter 1372, Session Laws of 1981.

Sec. 13.16. If the Commission determines by June 30, 1988, that it is unable to recommend any action on terms that are favorable to the State and the railroads, it shall so report to the General Assembly so that alternate action to take effect at the expiration of the lease in 1994 can be taken.

Sec. 13.17. To protect the interests of the minority stockholders, any recommendation to sell the stock must include a provision that the purchaser will offer to purchase all shares tendered at the same price or for the same amount of stock to be swapped.

Sec. 13.18. Expenses of the Commission shall be paid from dividend receipts from the North Carolina Railroad and the Atlantic and North Carolina Railroad. The Department of Justice shall provide necessary staff assistance to the Commission.

Sec. 13.19. At the time of recommending a new lease or a sale of stock, the Commission shall recommend to the General Assembly what use should be made of increased dividend payments or proceeds from the sale or exchange of stock.

Sec. 13.20. The Commission shall have expert assistance in negotiations to be provided by the Attorney General, Secretary of Transportation, State Treasurer, and the two railroads, or under contract with a qualified professional.

Sec. 13.21. G.S. 124-2 is amended by deleting "unless otherwise directed" and inserting in lieu thereof "if so directed in the act making the appropriation".

Sec. 13.22. G.S. 124-4(1) is amended by deleting ", canals,".

Sec. 13.23. G.S. 124-4(2) is amended by deleting ", roads, canals,".

Sec. 13.24. G.S. 124-4(3) is amended by deleting "the previous section" and inserting in lieu thereof "G.S. 124-3".

Sec. 13.25. G.S. 124-5 is amended by deleting "in which the State has or owns any stock or any interest" and inserting in lieu thereof "in which the State owns the majority of any class of voting stock".

Sec. 13.26. The second two sentences of G.S. 124-5 are repealed.

PART XIII.—STATE-OWNED PROPERTY STUDY COMMITTEE.

Sec. 14.1. There is established the Legislative Study Committee on State-owned property. Four members of the Committee shall be appointed by the Lieutenant Governor and four members shall be appointed by the Speaker of the House of Representatives. The Lieutenant Governor and the Speaker shall each appoint a cochairman from their appointees.

The Committee shall study:

- (1) The current system of planning for the space needs of the State and the allocation of State-owned property;
- (2) The current use of State-owned property;
- (3) The need for regional State office buildings;
- (4) The need for more coordinated management of or central management of State-owned capital assets;
- (5) The current system of making capital budget decisions, including decisions on whether to lease space or use State-owned space; and
- (6) Any related issues the Committee deems appropriate.

The Committee shall make a report to the Appropriations Committees of the 1987 General Assembly.

Upon the prior approval of the Legislative Services Commission, the Committee may obtain staff assistance from the Legislative Services Office.

Sec. 14.2. There is appropriated from the General Fund to the Legislative Services Commission the sum of twenty thousand dollars (\$20,000) for the 1985-86 fiscal year for the study established in this Part.

PART XIV.—CAFETERIA-STYLE BENEFITS STUDY COMMISSION.

Sec. 15.1. Subsection (c) of Section 12 of Chapter 1112 of the 1983 Session Laws is rewritten to read:

"(c) The Commission shall consist of the following 14 members:

- (1) five Representatives appointed by the Speaker of the House of Representatives;

(2) Adolescent Pregnancy and Premature Births (H.B. 2078 - Jeralds),

(3) Low-Level Radioactive Waste Regulation (S.B. 882 - Tally),

(4) Campaign and Election Procedures (S.B. 1002 - Martin, W.)

(5) Veterans Cemetery Study (H.B. 2117 - Lancaster).

Sec. 2. Transportation Matters. The Legislative Research Commission may study the actions proposed in the following portions of Senate Bill 866 of the 1985 General Assembly as introduced by Senator Redman:

Part I
Parts VII through XIII, and
Part XV.

Sec. 3. Reporting Dates. For each of the topics the Legislative Research Commission decides to study under this act or pursuant to G.S. 120-30.17(1), the Commission may report its findings, together with any recommended legislation, to the 1987 General Assembly.

Sec. 4. Bills and Resolution References. The listing of the original bill or resolution in Sections 1 through 3 of this act is for reference purposes only and shall not be deemed to have incorporated by reference any of the substantive provisions contained in the original bill or resolution.

—EXTEND COMPLIANCE WITH VOTING ACCESSIBILITY FOR THE
ELDERLY AND HANDICAPPED ACT.

Sec. 4.1. Section 4 of Chapter 4, Session Laws of the Extra Session of 1986 is amended by deleting "October 1, 1986" and substituting "July 1, 1987".

—RAILROAD NEGOTIATING COMMISSION AMENDMENTS.

Sec. 5. Section 13.4(b) of Chapter 792, Session Laws of 1985 is rewritten to read:

"(b) The cochairmen of the Commission may appoint an executive committee for such purposes as determined by the Commission."

Sec. 6. The first sentence of Section 13.7(4) of Chapter 792, Session Laws of 1985 is repealed.

Sec. 7. Section 13.8 of Chapter 792, Session Laws of 1985 is amended by adding the following at the end:

"The Boards of Directors of the railroads (or the Board of Directors of the railroad, if the two railroads are merged or combined) each should appoint a negotiating committee to conduct negotiations concerning the leases. If such committees are established, the Commission shall designate two or more of its members (other than the Commission members appointed under subdivisions (6) and (7) of Section 13.2 of this act) who may attend the negotiating sessions of each railroad, without a vote; provided that if the two railroads are not merged or combined, no person so designated may attend the negotiating sessions of both railroads."

Sec. 8. Section 13.10 of Chapter 792, Session Laws of 1985 is repealed.

Sec. 9. Section 13.14 of Chapter 792, Session Laws of 1985 is rewritten to read:

"Sec. 13.14. The Commission shall advise the Governor and General Assembly of its opinion as to whether the Governor should vote his proxy

to approve any lease negotiated by the Board of Directors of each railroad, or the Board of Directors of a merged or combined railroad, if such lease requires shareholder approval, and shall advise the Council of State whether it should approve the lease under Chapter 124 of the General Statutes."

Sec. 10. Section 13.15 of Chapter 792, Session Laws of 1985 is amended by adding the following immediately before the period at the end: ", and shall recommend the same to the Governor, in the exercise of his executive function of disposing of property. In any vote on whether the stock held by the State should be sold, the members appointed under subdivisions (6) and (7) of Section 13.2 of this act would be invited to attend the meetings in this regard and to offer the Commission advice and opinion, but would not be entitled to vote."

Sec. 11. Article 6A.1 of Chapter 120 of the General Statutes is amended by adding a new section to read:

"§ 120-30.9H. *Decision letters of U. S. Attorney General published in North Carolina Register.*—All letters and other documents received by the authorities required by this Article to submit any 'changes affecting voting' from the Attorney General of the United States in which a final decision is made concerning a submitted 'change affecting voting' shall be filed with the Director of the Office of Administrative Hearings. The Director shall publish the letters and other documents in the North Carolina Register."

Sec. 12. G.S. 150B-63(d1) is amended by adding between the words "information" and "relating" the words "required by law to be published in it, and information".

Sec. 12.1. Chapter 792 of the 1985 Session Laws (First Session, 1985) is amended by adding the following to Section 11.7:

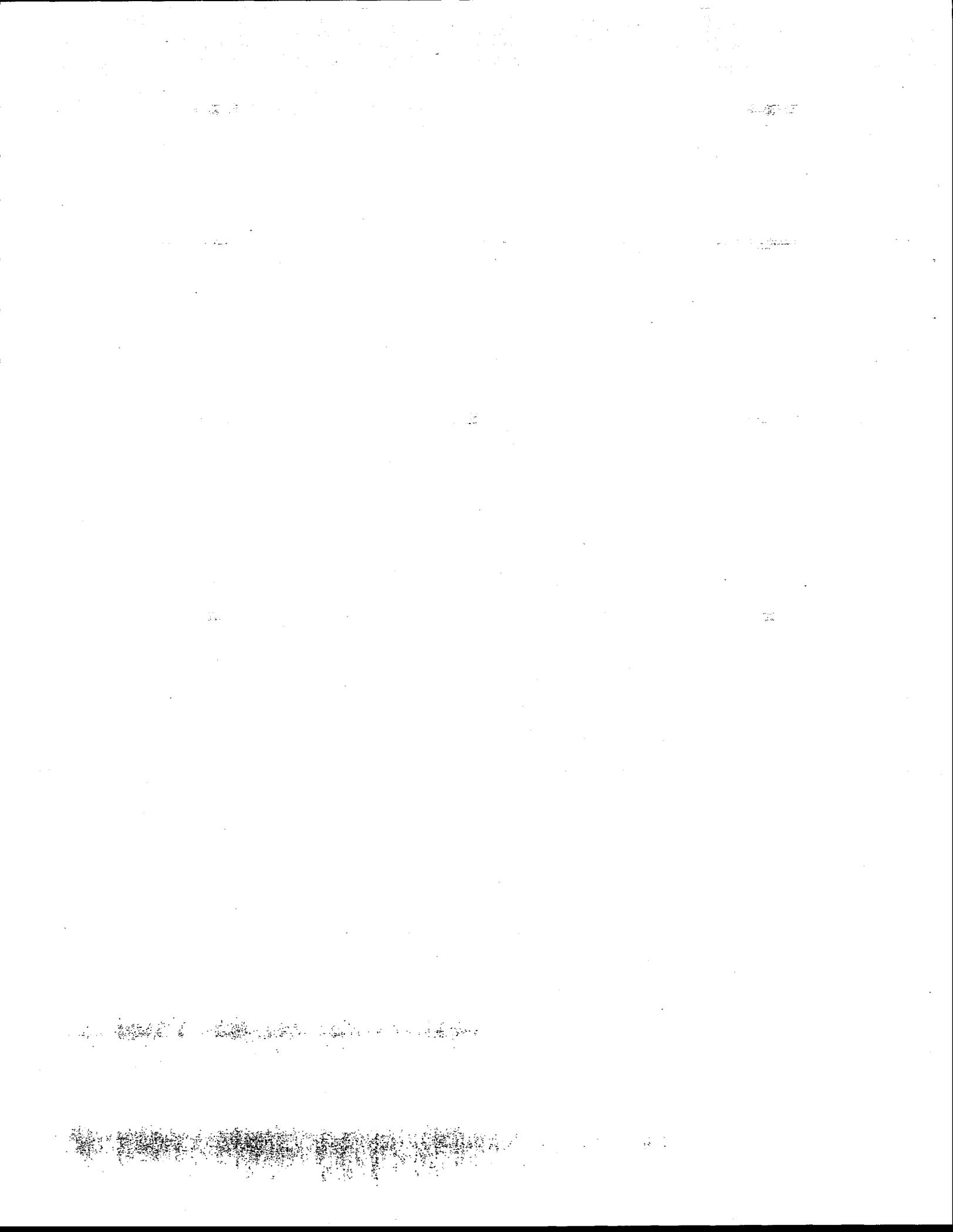
"Upon the approval of the Legislative Services Commission, additional expenses of the Study Commission on State Parks and Recreation Areas shall be paid from funds appropriated to the General Assembly for the 1986-87 fiscal year."

Sec. 12.2. Used Tire and Waste Oil Disposal. The Legislative Research Commission may study problems surrounding the environmentally safe disposal of used tires and waste oil and their possible solutions.

Sec. 13. This act is effective upon ratification.

In the General Assembly read three times and ratified, this the 16th day of July, 1986.

APPENDIX F





LACY H. THORNBURG
ATTORNEY GENERAL

State of North Carolina

Department of Justice

P. O. Box 25201

RALEIGH

27611

(919) 733-3316

(919) 733-4185

September 28, 1990

Mr. Sean Dail, Counsel
Legislative Research Commission
Committee on Railroads
2129 State Legislative Building
Raleigh, North Carolina 27611

Dear Mr. Dail:

This letter will respond to the inquiries contained in your letter of September 17, 1990.

1. Apparently, as a result of the 1985 legislation, a question was raised as to whether the North Carolina Railroad Company could negotiate a lease with Norfolk-Southern Corporation and include as a condition of the lease that Norfolk-Southern Corporation enter into another lease with the Atlantic and North Carolina Railroad. It was suggested that such an arrangement might violate the antitrust laws, but no opinion was rendered by this office. The issue appears to have been mooted by the merger of the N.C.R.R. and the A. & N.C.R.R.

2. I know of no reason why a legislative commission cannot consider whether the State should sell its interest in the North Carolina Railroad Company. It is noted that while the Governor and Council of State "have charge of all the State's interest in all railroads," any sale of the State's interest in the N.C.R.R. must be approved by the General Assembly. G.S. § 124-1; 1951 N.C. Sess. Laws, ch. 1046, sec. 1. If counsel for the railroad has specific concerns, I would be interested in hearing them.

3. The N.C.R.R. is authorized by its charter to "farm out" its right of transportation over the railroad. 1848-9 Public Laws of N.C., ch. 82, sec. 19. Furthermore, Chapter 55 grants all corporations the power to lease all or part of their property, unless the charter provides otherwise. G.S. § 55-3-02(5). As a practical matter, for this entire century, the "business" of the N.C.R.R. has been to lease its right-of-way.

As a matter of general corporate law, it is the board of directors which is responsible for managing the ordinary business of the company. The charter of the N.C.R.R. provides "that the affairs of the company shall be managed and directed by a general

Mr. Sean Dail
September 28, 1990
Page Two

board...." 1848-9 Public Laws of N.C., ch. 82, sec. 9. As a result of the merger between the A. & N.C.R.R. and the N.C.R.R., the State appoints ten of the fifteen members of the railroad's board of directors. These ten directors have a duty to all the shareholders; nevertheless, the State is obviously well represented on the board.

While a railroad negotiating commission may offer advice to the N.C.R.R.'s board and serve as a resource for information, it would not appear to be appropriate for the commission to dictate a specific course of action, or to participate directly in lease negotiations.

The directors are not servants to obey directions and orders given them by majority shareholders. In general the management and control of the company are entrusted to the directors for the benefit and protection of all the shareholders. Shareholders cannot require directors to act or advise with a committee elected by them to assist in the conduct of its affairs, where the statute gives the management of the business to the directors.

Ballantine, Corporations § 43 (1946).

The foregoing notwithstanding, it is noted that, pursuant to G.S. § 124-5, the N.C.R.R. may not lease its right-of-way without the approval and consent of the Governor and Council of State. Again, if the railroad's attorney has any specific legal concerns about the draft legislation (other than those I have expressed), I would welcome the opportunity to discuss them.

This will confirm attendance by the undersigned, or some other representative of the Attorney General, at the October 12, 1990 meeting.

Very truly yours,

LACY H. THORNBURG
Attorney General


E. Burke Haywood
Assistant Attorney General

EBH/bc

NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE SERVICES OFFICE
2129 STATE LEGISLATIVE BUILDING
RALEIGH 27611

GEORGE R. HALL, JR.
LEGISLATIVE ADMINISTRATIVE OFFICER
TELEPHONE: (919) 733-7044

GERRY F. COHEN, DIRECTOR
LEGISLATIVE DRAFTING DIVISION
TELEPHONE: (919) 733-6660

THOMAS L. COVINGTON, DIRECTOR
FISCAL RESEARCH DIVISION
TELEPHONE: (919) 733-4910

M. GLENN NEWKIRK, DIRECTOR
LEGISLATIVE AUTOMATED SYSTEMS DIVISION
TELEPHONE: (919) 733-6834



TERRENCE D. SULLIVAN, DIRECTOR
RESEARCH DIVISION
TELEPHONE: (919) 733-2578

MARGARET WEBB
LEGISLATIVE INFORMATION OFFICER
TELEPHONE: (919) 733-4200

September 17, 1990

Attorney General Lacy H. Thornburg
Justice Building
2 East Morgan Street
Raleigh, N.C. 27601-1497

Dear Mr. Attorney General:

The Legislative Research Commission's Committee on Railroads, cochaired by Senator James Ezzell and Representative Vernon Abernethy, requests that your office respond to several questions raised at the Committee's September 11, 1990 meeting. In addition to a written response to the following inquiries, the Cochairmen of the Committee would like to have a member of your office present to discuss these issues at the Committee's next meeting on October 12, 1990 at 10:00 in Room 1228 of the Legislative Building. If you feel it would be appropriate to involve the offices of the Secretary of State or the State Treasurer in this discussion, the Committee encourages you to do so.

At its September 11 meeting, the Committee reviewed draft legislation that would create a Railroad Negotiating Commission similar to the Commission created in 1985 (Part XII of Chapter 792 of the 1985 Session Laws, as amended by Chapter 1032 of the 1985 Session Laws). The Committee requests that you respond to the following inquiries:

1) What was the Attorney General's legal opinion of the 1985 legislation? The Commission met once, but terminated without carrying out its charge. Apparently, there was some suggestion that potential anti-trust problems existed in attempting to link the negotiations of two private railroad companies. Is that an

accurate description of your office's position? Were there additional problems with the legislation?

2) What are the legal implications, if any, of a legislative direction to a Commission to determine whether the State should sell its stock in the North Carolina Railroad? The North Carolina Railroad Company expressed its dismay that the Committee was even discussing the possibility of selling its stock, and voiced concern that such a discussion might subject the Company to certain SEC disclosure requirements.

3) What is your legal opinion of the draft legislation enclosed? Two versions are included: Version A directs the Commission only to work with the Board of Directors to enter into new leases; Version B includes an additional direction to consider the possibility of selling the State's stock in the North Carolina Railroad Company. The Committee is currently working with Version A, but would like for your office to address any problems it finds with Version B as well.

The Cochairmen and Counsel to the Committee feel that the Commission created by this legislation is purely advisory, and does not in any way usurp the power of the Board of Directors of the North Carolina Railroad Company. However, counsel to the Railroad Company has expressed the opinion that the legislation may mandate the Commission's approval of any proposed lease in violation of one or more of the following: the Sherman Act, the North Carolina Business Corporation Act (G.S. Chapter 55), G.S. Chapter 124, the Interstate Commerce Act, and the North Carolina Constitution.

Your assistance in this matter is greatly appreciated. I can be reached at 733-6660.

Sincerely,



Sean Dail
Committee Counsel
LRC Committee on Railroads

cc: Senator James Ezzell
cc: Representative Vernon Abernethy

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

S/H

D

91-LL-001A

(THIS IS A DRAFT AND NOT READY FOR INTRODUCTION)

Short Title: Railroad Negotiating Commission.

(Public)

Sponsors: .

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO CREATE A RAILROAD NEGOTIATING COMMISSION.
3 The General Assembly of North Carolina enacts:
4 Section 1. The General Assembly makes the following
5 findings of fact:
6 (1) The existence of the North Carolina Railroad
7 Company and the Atlantic and North Carolina
8 Railroad Company spurred the economic development
9 of North Carolina. The two companies have recently
10 merged to form a single company, the North Carolina
11 Railroad Company, which continues to be a valuable
12 resource to the State of North Carolina.
13 (2) Continued freight service on the route is essential
14 to the further economic development of North
15 Carolina.
16 (3) Passenger rail service is currently in operation
17 along the route, with the Carolinian running from
18 Raleigh to Charlotte and the Silver Star running
19 from Selma to Raleigh.
20 (4) With the North Carolina Railroad Company and the
21 State, its majority stockholder, on one side of the
22 negotiations and one or more potential purchasers
23 or lessees on the other, the railroad company and
24 the State should strive for one voice in the

- 1 proceedings in order to obtain the best results for
2 all stockholders. While the State recognizes that
3 the North Carolina Railroad Company is a private
4 corporation, the State has the paramount interest
5 as the majority stockholder.
- 6 (5) In 1985, upon the recommendation of the Legislative
7 Research Commission's Committee on Railroad
8 Operations, the General Assembly created a Railroad
9 Negotiating Commission (Part XII of Chapter 792 of
10 the 1985 Session Laws, as amended by Chapter 1032
11 of the 1985 Session Laws). The Commission was
12 charged with either negotiating a sale of the
13 State's stock in the two existing railroads or
14 working with the boards of directors of the two
15 railroads to enter into new leases prior to the
16 expiration of their leases.
- 17 (6) Before the Railroad Negotiating Commission could
18 begin its work, the Office of the Attorney General
19 determined that there were potential anti-trust
20 problems in attempting to link the negotiations of
21 two private railroad companies. The Commission
22 terminated on June 30, 1988, never having carried
23 out its charge.
- 24 (7) Due to the merger of the North Carolina Railroad
25 Company and the Atlantic and North Carolina
26 Railroad Company in 1989, the legal complications
27 that prevented the Railroad Negotiating Commission
28 from carrying out its legislative charge no longer
29 exist. Therefore, the General Assembly has
30 determined that a new Railroad Negotiating
31 Commission should be created to represent the
32 interests of the State of North Carolina as
33 majority stockholder in the North Carolina Railroad
34 Company.
- 35 Sec. 2. There is created the Railroad Negotiating
36 Commission, hereafter referred to as the "Commission."
- 37 Sec. 3. The Commission shall consist of 10 members,
38 appointed as follows:
- 39 (1) Two members appointed by the Governor, one of whom
40 shall be knowledgeable about the railroad business
41 and one of whom shall be an advocate of passenger
42 rail service;
- 43 (2) The Speaker of the House of Representatives or
44 another member of the House of Representatives

- 1 serving as his designee, and one other member of
2 the House of Representatives appointed by the
3 Speaker of the House of Representatives;
- 4 (3) The President Pro Tempore of the Senate or another
5 member of the Senate serving as his designee, and
6 one other member of the Senate appointed by the
7 President Pro Tempore of the Senate;
- 8 (4) The Attorney General, or a member of his staff
9 appointed by him;
- 10 (5) The State Treasurer, or a member of his staff
11 appointed by him;
- 12 (6) Two members or directors of the North Carolina
13 Railroad Company appointed by its board of
14 directors.

15 Sec. 4. Commission members shall be appointed no later
16 than September 1, 1991, and shall serve at the pleasure of the
17 appointing authority. Any vacancies on the Commission shall be
18 filled by the appointing authority. The President Pro Tempore of
19 the Senate or his designee on the Commission shall call the
20 initial meeting of the Commission.

21 Sec. 5. (a) The President Pro Tempore of the Senate and
22 the Speaker of the House of Representatives shall each appoint a
23 cochairman from the membership of the Commission.

24 (b) The cochairmen of the Commission may appoint an executive
25 committee for such purposes as determined by the Commission.

26 Sec. 6. Whenever an appointing authority has designated
27 a person to serve on the Commission in his place as permitted by
28 this act, that person shall be compensated in accordance with G.S.
29 120-3.1 if a member of the General Assembly and in accordance
30 with G.S. 138-5 in any other case.

31 Sec. 7. The Commission shall terminate June 30, 1995.

32 Sec. 8. The Commission should work with the Board of
33 Directors of the North Carolina Railroad Company to enter into
34 new leases prior to the expiration of the current leases. The
35 Board of Directors of the North Carolina Railroad Company should
36 appoint a negotiating committee to conduct negotiations
37 concerning the leases. If such a committee is established, the
38 Commission shall designate two or more of its members (other than
39 those appointed under subdivision (6) of Section 3 of this act)
40 who may attend the negotiating sessions of the North Carolina
41 Railroad Company, without a vote.

42 Sec. 9. Any new lease should not be for a period of
43 more than ___ years beyond the expiration of the current leases,

1 and should have an escalator clause based either on revenues or
2 inflation, or some combination of clauses.

3 Sec. 10. Any new lease should require that the lessee
4 cooperate with innovative uses of the right-of-way, whether for
5 fiber-optics, intra-city light rail (trolley) service, and
6 passenger service (in addition to the requirements of the
7 National Railroad Passenger Act).

8 Sec. 11. The Governor, in making appointments to the
9 Board of Directors of the North Carolina Railroad Company under
10 the charter provisions, should seek to ensure continuity in the
11 Board and to maintain cooperation between the Board and the
12 Commission.

13 Sec. 12. The Commission may negotiate or participate in
14 negotiations with the Norfolk Southern Corporation and with any
15 other potential lessees with which it desires to negotiate or to
16 participate in negotiations. The Commission and its Executive
17 Committee may meet in executive session.

18 Sec. 13. The Commission shall advise the Governor and
19 General Assembly of its opinion as to whether the Governor should
20 vote his proxy to approve any lease negotiated by the Board of
21 Directors of the North Carolina Railroad, if such lease requires
22 shareholder approval, and shall advise the Council of State
23 whether it should approve the lease under Chapter 124 of the
24 General Statutes.

25 Sec. 14. If the Commission determines by June 30, 1993
26 that it is unable to recommend any action on terms that are
27 favorable to both the State and to the North Carolina Railroad
28 Company, it shall report that fact to the General Assembly so
29 that alternative action may be taken prior to the expiration of
30 the leases on December 31, 1994.

31 Sec. 15. Upon recommending to the General Assembly a
32 new lease, the Commission shall also recommend the use to be made
33 of increased dividend payments.

34 Sec. 16. Expenses of the Commission shall be paid from
35 dividend receipts from the North Carolina Railroad Company. The
36 Department of Justice shall provide necessary staff assistance to
37 the Commission.

38 Sec. 17. This act shall become effective July 1, 1991.

1 proceedings in order to obtain the best results for
2 all stockholders. While the State recognizes that
3 the North Carolina Railroad Company is a private
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5 as the majority stockholder.

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41 and one of whom shall be an advocate of passenger
42 rail service;

43 (2) The Speaker of the House of Representatives or
44 another member of the House of Representatives

- 1 serving as his designee, and one other member of
2 the House of Representatives appointed by the
3 Speaker of the House of Representatives;
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5 member of the Senate serving as his designee, and
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- 8 (4) The Attorney General, or a member of his staff
9 appointed by him;
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19 the Senate or his designee on the Commission shall call the
20 initial meeting of the Commission.

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22 the Speaker of the House of Representatives shall each appoint a
23 cochairman from the membership of the Commission.

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25 committee for such purposes as determined by the Commission.

26 Sec. 6. Whenever an appointing authority has designated
27 a person to serve on the Commission in his place as permitted by
28 this act, that person shall be compensated in accordance with G.S
29 120-3.1 if a member of the General Assembly and in accordance
30 with G.S. 138-5 in any other case.

31 Sec. 7. The Commission shall terminate June 30, 1995.

32 Sec. 8. The Commission should either negotiate a sale
33 of stock or should work with the Board of Directors of the North
34 Carolina Railroad Company to enter into new leases prior to the
35 expiration of the current leases. The Board of Directors of the
36 North Carolina Railroad Company should appoint a negotiating
37 committee to conduct negotiations concerning the leases. If such
38 a committee is established, the Commission shall designate two or
39 more of its members (other than those appointed under subdivision
40 (6) of Section 3 of this act) who may attend the negotiating
41 sessions of the North Carolina Railroad Company, without a vote.

42 Sec. 9. Any new lease should not be for a period of
43 more than ___ years beyond the expiration of the current leases,

1 and should have an escalator clause based either on revenues or
2 inflation, or some combination of clauses.

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4 cooperate with innovative uses of the right-of-way, whether for
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17 its Executive Committee may meet in executive session.

18 Sec. 13. The Commission shall advise the Governor and
19 General Assembly of its opinion as to whether the Governor should
20 vote his proxy to approve any lease negotiated by the Board of
21 Directors of the North Carolina Railroad, if such lease requires
22 shareholder approval, and shall advise the Council of State
23 whether it should approve the lease under Chapter 124 of the
24 General Statutes.

25 Sec. 14. If the Commission determines that a sale of
26 the stock owned by the State is desirable, it shall recommend a
27 contract to the General Assembly for its approval as required by
28 Chapter 1046, Session Laws of 1951, as amended by Chapter 1372,
29 Session Laws of 1981, and shall recommend the same to the
30 Governor, in the exercise of his executive function of disposing
31 of property. In any vote on whether the stock held by the State
32 should be sold, the members appointed under subdivision (6) of
33 Section 3 of this act would be invited to attend the meetings in
34 this regard and to offer the Commission advice and opinion, but
35 would not be entitled to vote.

36 Sec. 15. If the Commission determines by June 30, 1993
37 that it is unable to recommend any action on terms that are
38 favorable to both the State and to the North Carolina Railroad
39 Company, it shall report that fact to the General Assembly so
40 that alternative action may be taken prior to the expiration of
41 the leases on December 31, 1994.

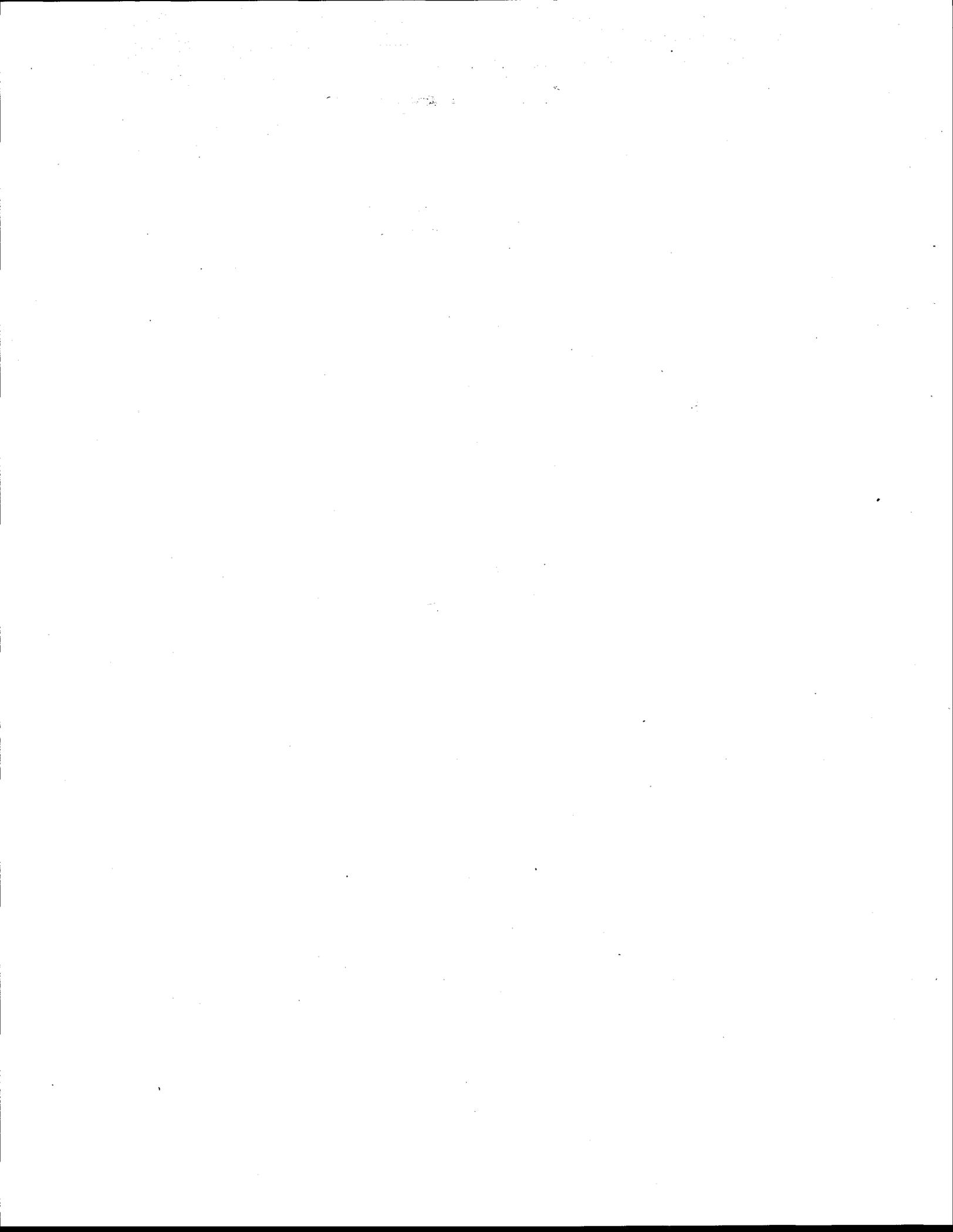
42 Sec. 16. In order to protect the interests of the
43 minority stockholders, any recommendation to sell the stock must
44 include a provision that the purchaser will offer to purchase all

1 shares tendered at the same price or for the same amount of stock
2 to be swapped.

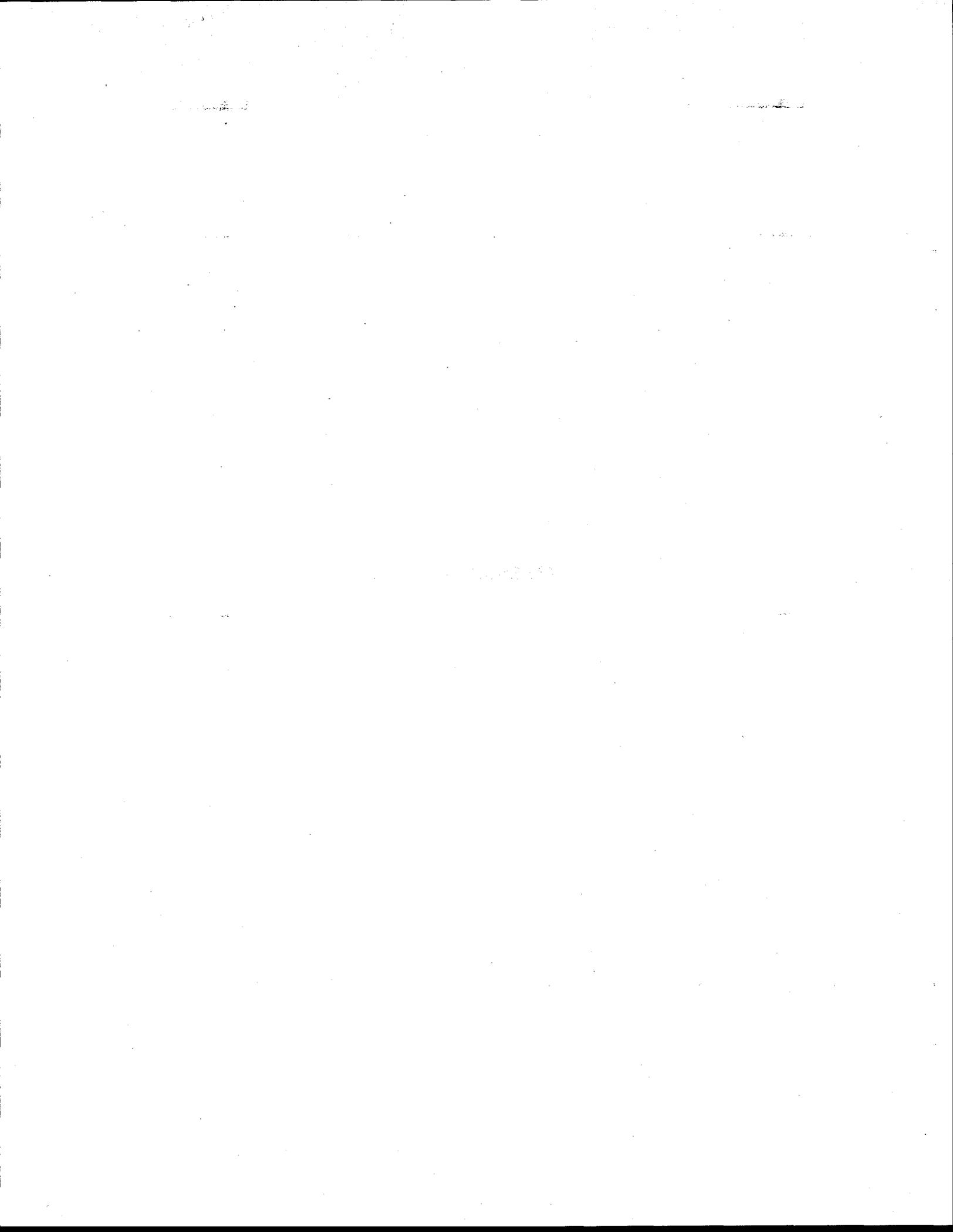
3 Sec. 17. Upon recommending to the General Assembly a
4 new lease or a sale of stock, the Commission shall also recommend
5 the use to be made of increased dividend payments or the proceeds
6 from the sale or exchange of stock.

7 Sec. 18. Expenses of the Commission shall be paid from
8 dividend receipts from the North Carolina Railroad Company. The
9 Department of Justice shall provide necessary staff assistance to
10 the Commission.

11 Sec. 19. This act shall become effective July 1, 1991.



APPENDIX G



GENERAL HIERARCHY OF
RAILROAD CORRIDORS IN NORTH CAROLINA
(In relation to economic conditions)

CLASS I OPERATION
annual revenues >\$50 million

CLASS II OPERATION
annual revenues of \$10-\$50 million

CLASS III (SHORT LINE) OPERATION
annual revenues <\$10 million

100% privately owned (sale or lease)

Privately owned
Possible public rehabilitation assistance

Non-profit owned, leased to private operator
Probable public rehabilitation assistance

Publicly owned, leased to private operator
Probable public rehabilitation assistance

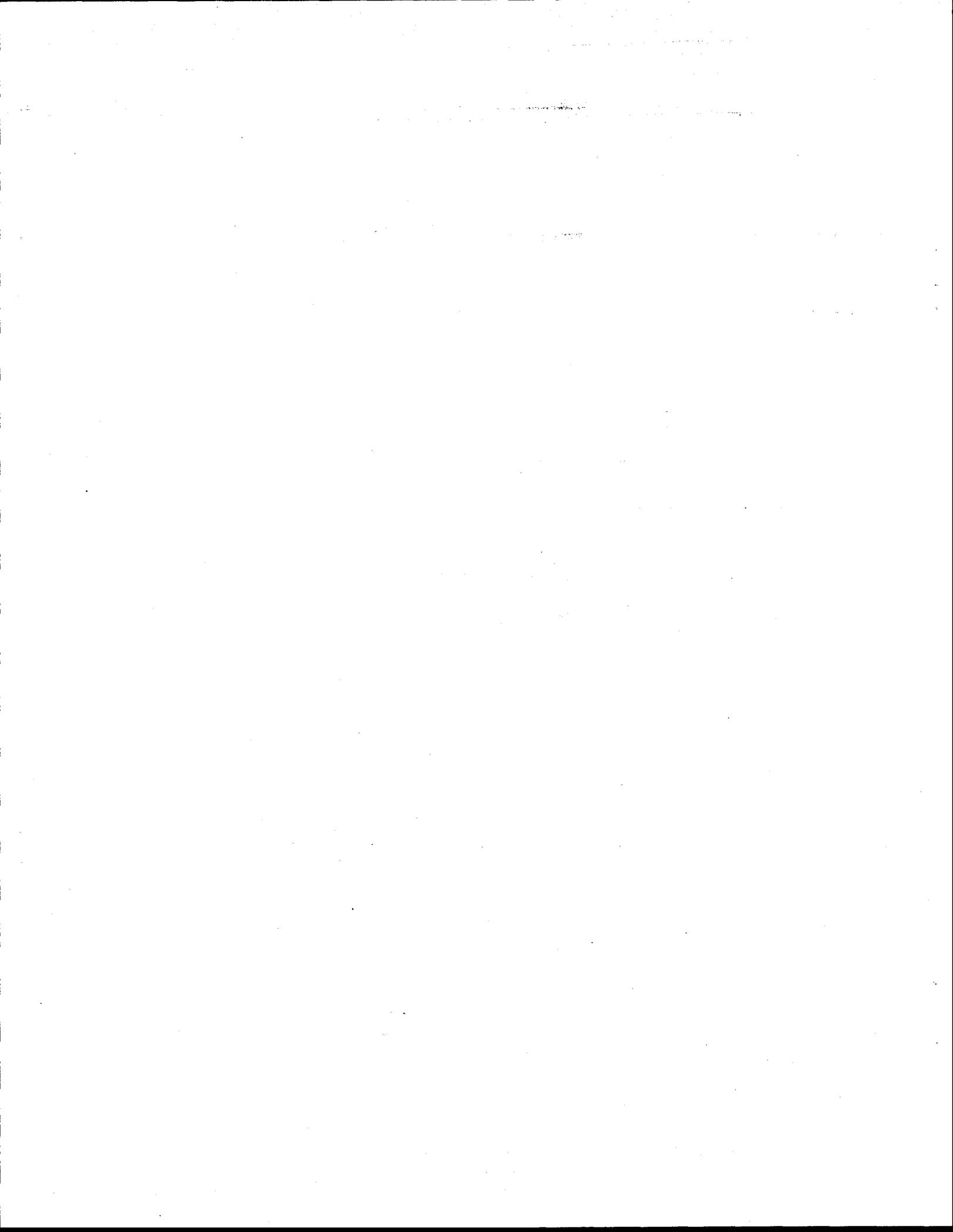
Publicly owned and operated
(Not option in North Carolina)

"ABANDONED" CORRIDOR

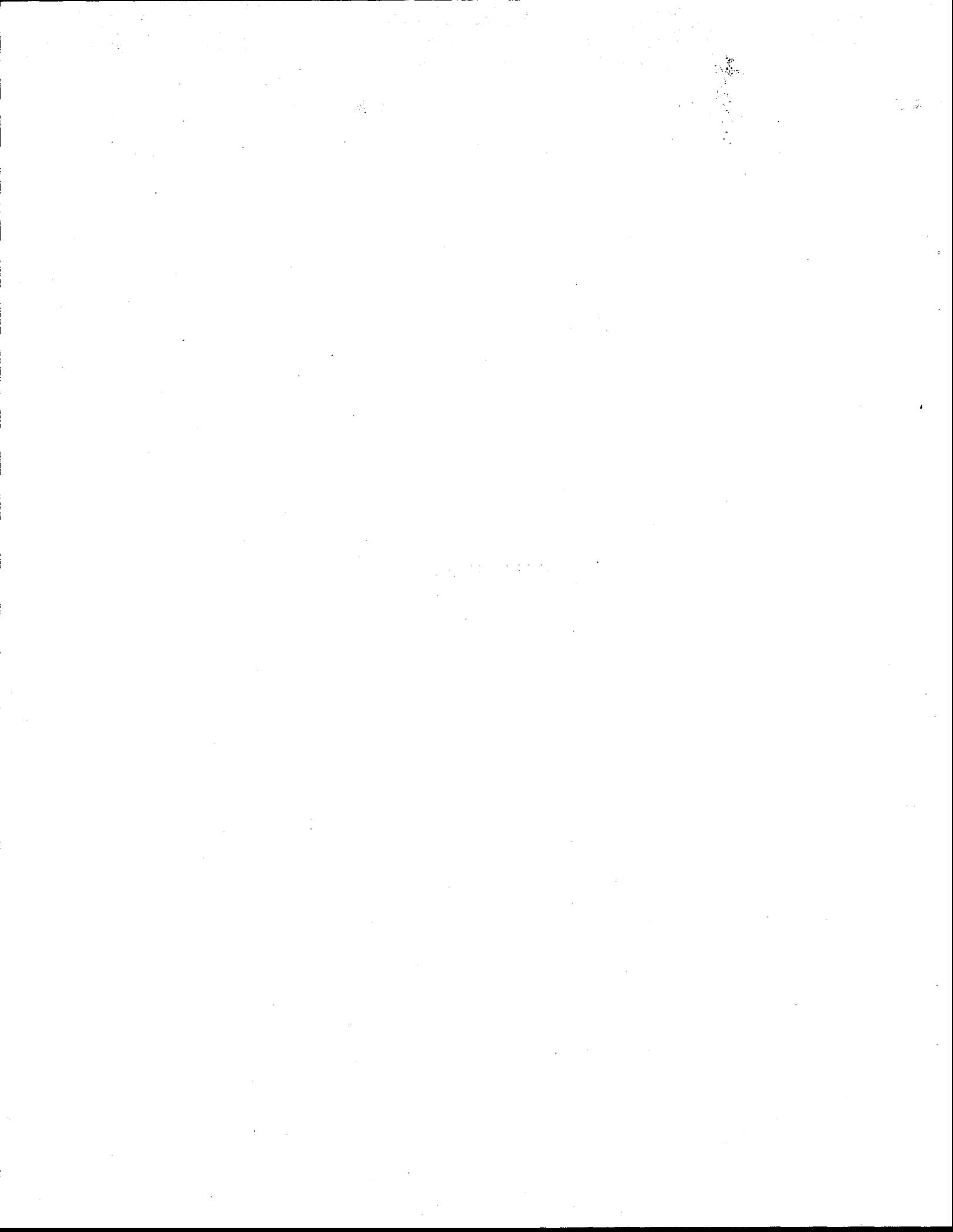
Corridor acquired and "preserved"

Corridor lost

Corridor reassembled through condemnation



APPENDIX H



NORTH CAROLINA DEPARTMENT OF TRANSPORTATION

RAIL ISSUES SUMMARY

March, 1990

Since the 1920's, many miles of valuable rail corridors have been lost to abandonment. Lost also has been the opportunity to ever return them to the productive freight and passenger use for which they were intended.

A significant number of operating railroads have been saved through the formation and revitalization of new short line railroad companies, most of them established since Federal deregulation under the Staggers Act in 1981. Still, the threat of a smaller rail system in North Carolina remains, and the potential impact on our whole transportation system of losing any more rail corridors is severe.

<u>Benchmarks</u>	<u>(in route miles)</u>
Peak size of N.C. rail system in 1920:	5,522
Lines abandoned since 1971:	715
Rail lines remaining in 1990:	3,620
Corridors now being considered for preservation:	210
All N.C. rail lines subject to sale, lease, major service change, and/or abandonment:	750 to 2,144

If a "moderate threat scenario" of a 750 mile loss over 6 to 10 years is realized, the projected preservation cost is in the neighborhood of \$80 million. Retention and improvement of rail service now is an investment in the future economic and industrial viability of our state, as well as being a prudent conservation of public funds for the future.

Rail Corridor Preservation:

Besides being detrimental to economic development, loss of rail corridors has a potentially serious impact on the state's ability to meet its future transportation needs.

In spite of the State's recently expanded highway construction program, we cannot expect North Carolina's highways to meet all our surface transportation needs.

Limitations on future funding and land availability will make it increasingly difficult for continued road building to keep pace with travel needs in the future.

Simultaneously, airport congestion is becoming more pronounced, and limited air space capacity in metropolitan regions surrounding North Carolina is disrupting schedules at the state's major airports. By the year 2010, the volume of air travel is expected to be three times today's traffic. It would appear the time is coming when medium to short-haul air travel will be an impractical luxury, while the necessity and number of long-haul commercial flights continues to increase.

It can be concluded from these developments that sometime in the next twenty to thirty years North Carolina will begin depending on railroads to move people as well as goods.

What began principally as a single rail alternative for movement at the turn of the century has now evolved into broader choices. Highways, aircraft, and railroads today move passengers and freight. Such choice is crucial. Today's economy and tomorrow's growth cannot rely upon a single means of moving about.

There can be little hope for future rail passenger travel unless rail lines exist between places to be served, or can be economically constructed when there is a need for them. A rail corridor converted to other non-transportation, non-linear use will be prohibitively expensive to return to rail use. A rail corridor lost is probably "gone forever."

The Rail Corridor Preservation Act, passed by the General Assembly in 1988, gave the Department of Transportation the power to purchase railroads and preserve rail corridors "for future rail use and interim compatible uses." Amendments to the Act passed during the 1989 Session also declared a public purpose for NC-DOT to reassemble critically important lost portions of rail corridors by condemnation.

Also in 1989, NC's new \$9.8 billion, 13 year Highway Trust Fund allocated some funding for rail corridor preservation as "economical rail route alternatives to highway construction."

Rail Corridor Preservation (Continued)

State purchase of the 67 mile Dillsboro to Murphy right-of-way marked the first time since 1845 North Carolina has owned a railroad. That and the new legislation appear to mark a definite public policy shift in favor of preserving rail corridors.

Keeping healthy short line railroads operating is undoubtedly the best way of preserving threatened rail corridors. The 1977 Rail Revitalization Act provided the authority to rehabilitate and revitalize railroads. Requests for this kind of assistance are growing enormously, as major infrastructure rebuilding becomes critical.

The legal tools are now in place. Finding the most workable means of funding action is now required if they are to be used effectively.

Current Priority Acquisition and Reassembly Candidates:

At least eight rail corridors will be lost in the next few months if action cannot be taken to save them as operating short line railroads or railbanked corridors. They are:

- Franklinton to Louisburg (Franklin County)
- Durham to Roxboro (Durham and Person counties)
- Lincolnton to So. Newton (Catawba and Lincoln counties)
- Statesville to Troutman (Iredell County)
- Charlotte - Cedar Yard (Mecklenburg County)
- Mt. Holly to Gastonia/Ranlo/Belmont (Gaston County)
- Waynesville to Dillsboro (Haywood and Jackson counties)
- Cumnock to Sanford (Lee County)

At least three abandoned rail corridor segments are candidates for reassembly through condemnation as rapidly as possible, before development over them and rising land prices forfeit their future public use for intercity and/or commuter rail service. They are:

- Wallace to Castle Hayne (Pender County)
- Durham southwest to I-40 (Durham County)
- Greensboro to Brook Cove (Guilford, Forsyth, and Stokes counties)

Rail Revitalization And Freight Service Preservation:

Short line railroad formation is the preferred method of preserving local freight service and rail corridors. It is now hindered by the increasing difficulty of financing right-of-way and equipment acquisition.

Track rehabilitation, an important means of maintaining marginal short line service in the past, is becoming more difficult because of rising needs and severe limitations on public funding assistance in comparison with them.

Part of the escalating requests for high cost rail line rehabilitation is caused by the "age out" of major infrastructure components (mainly trestles) to an unavoidable need for overhaul or replacement. Each instance of this encountered in the future could represent a funding need of several hundred thousand or several million dollars.

Some forms of intermodal service (primarily piggyback; secondarily single-stack container) are being phased out by the trunk railroads as part of a regional trend. The CSX piggyback terminals at Portsmouth and Rocky Mount, as well as the Norfolk Southern terminal at Asheville, have already been closed. Intermodal rail service to the Port of Wilmington was suspended in 1989.

The national labor protection issue constitutes a threat to the State's rail system and its operators because it has not yet been resolved by the Congress or the courts. If it is resolved in favor of applying heavier labor protection to short line railroads, at least nine presently operating North Carolina rail corridors will face probable abandonment. Additional legislative action would then be needed to retain them in active service.

Rail Passenger Service:

The Governor's Rail Passenger Task Force has recommended to him "that the State move to provide intercity service in the Charlotte-Greensboro-Raleigh corridor." A means of funding the long term financial commitment for this has been provided in the new Highway Trust Fund, and intercity passenger service through the Piedmont should be resumed in 1990.

This is a first step in what will be a long journey toward the high speed (over 125 mph) rail passenger service which will be needed in decades to come. Engineering studies are underway to identify capital improvements for reducing passenger rail travel time throughout the corridor.

Rail Passenger Service (Continued)

Future passenger rail service, whether conventional or high speed, will depend on the continued existence of rail corridors through which it can be run.

Equitable Public Policy For Railroads:

The declining share of total freight volume moving on our nation's rail system, and the consequences that trend holds for our future, are disturbing. Those consequences are evident today as disinvestment in rail infrastructure, abandonment of less productive rail lines, and corresponding increases in heavy truck traffic on our highways.

Our railroads not only are important now, but also offer significant available capacity and potential for future freight and passenger transportation needs. They must not be ignored into oblivion. There is evidence that many public laws, policies, and attitudes tend to do just that.

We need a close examination of these public actions which, perhaps inadvertently, discourage or otherwise make it difficult for the private railroads to be legitimate players in the nation's total transportation system.

We also believe creation of a state and federal policy and regulatory environment supporting the establishment and nurturing of the short line industry is critically important. It must accompany the public funding role in assuring the potential of essential future rail service is realized in the public interest.

Rail Policy Questions To Be Addressed:

1. How can the State best move toward creation of a more equitable public policy for railroads?
2. What funding mechanisms should be established to better preserve rail corridors through railroad revitalization and corridor acquisition?
3. What advisory mechanism (an existing group, a new Rail Council, etc.) would prove most useful to assist State rail policy decision-making?

NORTH CAROLINA DEPARTMENT OF TRANSPORTATION

HIGH PRIORITY RAIL CORRIDORS

MARCH, 1990

[The following rail corridors are listed in an order of priority generally determined by the immediacy of the threat of loss to them, and/or the importance of reassembling them for future rail use if already abandoned.]

Franklinton to Louisburg (Franklin County), 9.64 miles, LRS. The Laurinburg and Southern Railroad (LRS) abandoned the line in 1989. However, they own the right-of-way in fee simple and are so far willing to sell it to the State. Future commuter rail use potential to Raleigh probable.

Nov. 3, 1989 - Nominated in Transportation Improvement Program, and acquisition directed by Board of Transportation.
Feb. 12, 1990 - Right-Of-Way Branch refers matter to AG's Office for title search and verification.

(Picks to) Helena to Durham (Person and Durham counties), 25.5 miles, NS. Commuter rail use from Treyburn to Durham and Research Triangle probable. Freight service to Roxboro also would be protected by acquisition. NS has agreed to hold the track in place until April of 1990.

November, 1989 - Nominated in Transportation Improvement Program as candidate for acquisition in FY-90.

Lincolnton to So. Newton (Lincoln and Catawba counties), 14.6 miles, NS. NS has agreed to delay track removal until April 10, 1990.

November, 1989 - Nominated in Transportation Improvement Program as candidate for acquisition in FY-91.

Jan. 18, 1990 - Draft Acquisition Evaluation completed and distributed. Recommended purchase of northern 7 miles to new U.S. Rt. 321 below Maiden.

Wallace to Castle Hayne (Pender and New Hanover counties), 26.8 miles [Reassembly]. Abandoned in 1986. Crucial intercity rail route to connect Wilmington with Raleigh and the northern Piedmont via the NCR.

(See separate detailed status report.)

Dillsboro to Waynesville (Jackson and Haywood counties), 20 miles, NS. Abandonment sale of this line segment to the State, and lease to Great Smoky Mountains Railway, probable.

Charlotte, Cedar Yard (Mecklenburg County) .61 mile, CSX. Future commuter rail potential to west of Charlotte probable. Feb. 26, 1990 - City of Charlotte formally requests acquisition assistance for this and other previously abandoned portions of the Cedar Yard necessary to make future commuter rail system connections to other corridors.

Statesville to Troutman (Iredell County), 3.43 miles NS. Should be preserved to retain option of rail freight service to industrial sites between NC Rt. 115 and I-77. While final abandonment has been temporarily delayed, State capability to eventually respond to it is limited, because the Highway Trust Fund allocation provision does not seem to cover economic development purposes.

Mount Holly to Gastonia (Gaston County), >12 miles, CSX. February, 1990 - This complex of lines is placed on the CSX System Diagram for abandonment, including the Belmont Branch and the Ranlo Spur/Spencer Mountain Lead. These branches have been previously identified by the City of Charlotte as necessary for a future commuter rail system.

Cedar Yards to Mount Holly (Mecklenburg and Gaston counties), approximately 12 miles, CSX. This corridor connects Charlotte with Mount Holly, Belmont, Ranlo, and Gastonia. It runs closely parallel to the CSX main line, and is reported to have few shippers. In view of the Cedar Yard abandonments and placement of the Mt. Holly branchline complex on the CSX System Diagram, it seems only a matter of time until this corridor is also disposed of. It has been previously identified by the City of Charlotte as necessary for a future commuter rail system.

Greensboro to Brook Cove (Guilford, Forsyth, and Stokes counties), 31 miles [Reassembly]. Major portion abandoned in 1981, the remainder in 1990. If reassembled for future commuter rail use, it could be an important direct link between Greensboro and the northwestern part of the region, which is now not usually accessible except through Winston-Salem.

Nov. 15, 1989 - Inquiry from private industry about the feasibility of right-of-way reassembly from Brook Cove to Walnut Cove for development of industrial sites.

Jan. 8, 1990 - Legislative inquiry regarding possible reassembly from Greensboro northwest to a point on US Rt. 220 where park/ride facilities could terminate an express bus route.

Forest City to Ellenboro (Rutherford County) 12 miles, NS. Abandonment certificate obtained and service discontinued in 1986, but tracks remain in place. Probably needed for enhancing the economic viability of the new Thermal Belt Railway (Gilkey to Forest City), as it would allow reactivation of the Cliffside Railroad (Cliffside to Ellenboro) without additional equipment or crew costs.

Norlina to Roanoke Rapids/Weldon (Warren and Halifax counties), 37 miles [Reassembly]. Abandoned in 1984. Reassembly considered as a means of making the S-Line (Norlina to Hamlet) more viable, whether for the purpose of retaining CSX service on the line or providing a successor short line with a northern connection to CSX's main line.

Norlina to Hamlet and south through Columbia to Denmark, SC (Warren, Vance, Franklin, Wake, Lee, Moore, Scotland, and Richmond counties in NC), 153 miles in NC, CSX. This is an interstate corridor judged to be strategically important for future economic development, intermodal rail freight, and high speed intercity passenger rail use. Present freight traffic along it is dangerously light, and even though it includes the route of the Amtrak Silver Star, its future has been continuously in question since CSX abandoned from Norlina to Petersburg, VA in 1987.

Durham, Southwest to I-40 (Durham County), >7 miles, NS [Reassembly]. Partly abandoned in 1981. Future Durham to Chapel Hill commuter rail potential possible, along the median of I-40 and connecting with the State University Railroad at Carrboro. Right-of-way heavily threatened by development.

November, 1989 - Nominated in Transportation Improvement Program as candidate for acquisition. No priority indicated.

Charlotte, CBD south (Mecklenburg County) 4.7 = 5.25 mi., NS. The rail corridor running north-south through the center of Charlotte, collectively known as "the R line" and running parallel to Tryon Street one block to the east. (From Second Street north it is owned by the North Carolina Railroad.) An essential line for a future Charlotte commuter rail system. Jan. 23, 1990 - Latest rumors have new convention center (six blocks south of center of town) planned to go over the tracks because of pressure to start a trolley service on the line.

Sanford to Cumnock (Lee County), 9 miles, NS. Preservation of the line would be prudent considering Sanford's location at the south end of the Research Triangle region, and the line's proximity to corridors with future intercity and commuter rail importance. NS to survey the line for abandonment sale sometime during first six months of 1990.

Edenton to Norfolk (Chowan, Perquimans, Pasquotank, Camden, and Currituck counties), 102 miles, NS. An important corridor for connecting northeastern North Carolina with the Norfolk/Hampton Roads region for commuter rail and economic development purposes. NS reports ICC approval to certify for leased operation by Rail Tex could be delayed or killed by Railway Labor Executives Association v. Chesapeake Western lawsuit.

TOTAL HIGH PRIORITY CORRIDOR ROUTE MILES: 481 (13%)

Wallace to Castle Hayne (Pender and New Hanover counties),
26.8 miles [Reassembly]. Abandoned in 1986.

Previous railroad owners: CSX Transportation
Seaboard System/Coastline RR
Atlantic Coastline Railroad
Wilmington and Weldon
(originally Wilmington and
Raleigh) Railroad

A crucial intercity rail route to connect Wilmington with Raleigh and the northern Piedmont via the NCRR, and eventually with high speed rail passenger service. This "gap" in the Wilmington to Goldsboro rail corridor could be threatened by development from the new I-40. It became a first choice for reassembly after 1989 amendments to the Rail Corridor Preservation Act granted NCDOT authority to reassemble lost portions of rail corridors by condemnation. Estimated reassembly cost: \$472,500.

Oct. 28, 1989 - Right-Of-Way Branch asked to investigate titles. Needed:

A. A title survey to identify:

- 1) parcels held by the railroad either in fee simple or in some form of easement at the time of abandonment;
- 2) what kind of easement instruments (e.g. simple easement, fee simple conveyance, or conditional title) were used when the right-of-way was assembled in 1833.

B. A land value estimate to be used in arriving at a cost for either:

- 1) buying the fee simple property still owned by CSX and condemning the remainder of the corridor; or
- 2) buying both fee simple property and easements from CSX, where the nature of the easement instruments used and the title survey indicates the easements are still in force.

November, 1989 - Nominated in Transportation Improvement Program as candidate for acquisition.

Dec. 1, 1989 - Rail Program Track Inspector completes ground survey of corridor.

Feb. 13, 1990 - Acquisition discussed extensively in first meeting of Legislative Research Commission Railroad Committee. Report on progress requested by March 13.

Feb. 19, 1990 - Right-Of-Way Branch anticipates title study will be finished in time for report to Railroad Committee.

